Labor Compliance Policies and Procedures Manual

Watershed Conservation Authority

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1 INTRODUCTION

The purpose of this manual is to provide the Watershed Conservation Authority (The Authority) with guidelines for the review of a contractor's compliance with the California Labor Code. For more than 60 years, the California Labor Code has required that workers employed by contractors or subcontractors, in the execution of public works contracts, must be paid the state-determined prevailing wage. Proposition 84-funded projects (Prop 84) additionally require a Labor Compliance Program (LCP) to monitor and enforce the requirements of the California Labor Code efficiently, as well as to handle the processing, investigation and resolution of violations.

California Labor Code §1720 defines public works as any pre-construction or construction activity, including alteration, demolition, repair or maintenance work, paid for in whole or in part by public funds. California Labor Code §1771 establishes the minimum requirements for payment of prevailing wages and the requirements of an LCP. The Division of Labor Standards Enforcement (DLSE), a body of the California Department of Industrial Relations (DIR), is the government agency primarily responsible for the enforcement of prevailing wage requirements on California public works projects[1].

This manual was prepared to facilitate conformity with the requirements of the applicable California Labor Code sections. The information included herein should be intended as a framework for implementing an effective LCP for Prop 84 projects, designed to enforce and monitor prevailing wage requirements consistent with the practice of the DLSE.

[1] See http://www.dir.ca.gov/lcp.asp

2 LABOR COMPLIANCE PROGRAM

2.1 Statutes and Applicability

A comprehensive list of statutes that require Awarding Bodies to have an LCP is maintained on the DIR website.

A comprehensive list of the laws and regulations governing LCPs can be found in:

- California Labor Code (§§1720 - 1743, §1750, §§1770 - 1784, §§1810 - 1815, §§1860 - 1861)
- Title 8, California Code of Regulations, Chapter 8
    - Subchapter 3. Payment of Prevailing Wages upon Public Works (§§16000 - 16404)
    - Subchapter 4. Awarding Body Labor Compliance Programs (§§16421 - 16802)
    - Subchapter 6. Prevailing Wage Hearings (§§17201 – 17270)

These sections can be found on the DIR's Web site at:
http://www.dir.ca.gov/lcp/LCPLawsRegs.htm.

A listing of approved Awarding Body LCPs is available at:
http://www.dir.ca.gov/lcp/LCPTypes.htm.

2.2 Overview of LCP Regulations

An LCP is designed to fulfill the requirements of the California Labor Code, to keep all parties informed of their obligations, and to monitor and enforce prevailing wage requirements. California Labor Code §1771.5 and California Code of Regulations, Title 8, §16421 outline the necessary components of an LCP. These components are listed below:

1) **Bid Invitations and Other Documents:** Appropriate language should be included in all bid invitations and public works contracts (*e.g.* The Call for Bids, Design-Build Request, and the contract or purchase order). *Refer to Section 5.1.*
2) **Pre-Construction Meeting:** A pre-construction meeting must be held, during which applicable federal and state labor law requirements are discussed, copies of suggested reporting forms are furnished, and a checklist showing which laws were discussed are kept. *Refer to Section 5.6.*
3) **Certified Payroll Reports:** Certified Payroll Reports (CPRs) containing a statement of compliance signed under penalty of perjury, must be kept by the contractor and furnished to The Authority at times designated in the contract (at least monthly) or within 10 days of request. *Refer to Section 8 for information on collecting and reviewing CPRs.*

4) **Records Review:** The LCP must have a program for orderly review of payroll records and, if necessary, for audits to verify compliance with the California Labor Code. *Refer to Section 8 for information on reviewing CPRs.*
5) **Enforcing Compliance:** Reasonable, vigorous, and prompt action must be taken to (a) determine whether violations exist, and (b) enforce compliance, including through imposition of appropriate penalties and formal enforcement action, when violations are found. An LCP shall neither avoid the use of its enforcement authority based on cost considerations nor shall it use that authority in an unreasonable manner to gain leverage over a contractor or subcontractor. Unreasonable use of enforcement authority includes, but is not necessarily limited to, prolonged or excessive withholdings of contract payments without making a determination that a violation has occurred. *Refer to Section 11.*
6) **Withholding Payments:** The LCP must have a prescribed routine for withholding penalties, forfeitures, and underpayment of wages for California Labor Code violations (e.g. delinquent or inadequate payroll records). *Refer to Section 16.7.*
7) **Provision for Withholding Payments:** Contracts must contain a provision that contract payments shall not be made when payroll records are delinquent or inadequate. *Refer to Section 7*.

4 ROLES AND RESPONSIBILITIES OVERVIEW

The Labor Compliance Officer (LCO) for The Authority and the contractor have specific responsibilities which are described below.

4.1 Labor Compliance Officer: General Responsibilities

Where used in this document, the Labor Compliance Officer shall mean The Authority's LCO or his or her designee. The LCO or his/her designee assigned to the project is responsible for obtaining and maintaining the prevailing wage determinations in the project files; maintaining and preserving the confidentiality of personnel information, payroll records, and other records; as well as furnishing this information to appropriate parties upon request. It is also the LCO's responsibility to be cognizant of and actively enforce the clarifications, modifications, and exceptions to the California Labor Code and the California Code of Regulations by periodically reviewing Important Notices, Interim Determinations, and Opinion Letters issued by the DIR.[2] The DIR issues notices regarding the above by an email newsletter which can be subscribed to at: http://www.dir.ca.gov/email/listsub.asp?choice=1.

The LCO is empowered to perform, among other enforcement duties, the following activities:

1. Ensure that labor compliance requirements are discussed at the pre-construction meeting.

2. Conduct payroll audits to confirm that wage rates and hours listed on contractor CPRs match prevailing wage rates and hours, and that correct benefit amounts are paid for all project hours.

3. Interview employees of contractors and subcontractors of all tiers.

4. Verify that required posters are displayed at jobsites. *See Section 9.1 below*.

5. Issue appropriate notices for withholding of contract payments when the LCO determines that a contractor is in breach of labor compliance requirements.

6. Collect and disburse wages to employees and penalties to The Authority when it is found that an underpayment has occurred.

7. Obtain approval of recommended forfeitures from the Labor Commissioner.

8. Conduct investigations, often in coordination with outside enforcement agencies, in response to delinquent CPRs or worker complaints.

[2] See California Code of Regulations §§16434(a),(b),(c),(d), and (e).

9. Request a contractor's debarment or dismissal by the DLSE for willful, flagrant, or repeated violations.

10. Defend Notice of Withholding of Contract Payments in administrative review proceedings and in court.

11. Ensure Notice of Contract Award forms (DAS 140) are properly submitted to the Division of Apprenticeship Standards (DAS).

12. Verify all apprentices used on the project are registered apprentices with the DAS and are being used in the correct journeyman to apprentice ratio.

4.2 Contractor's Responsibilities

According to the California Labor Code and the California Code of Regulations, contractors working on public works projects are responsible for fulfilling the following:

1. Duty to Cooperate with Monitoring by the LCO: The contractor must cooperate with representatives of the project in support of their responsibilities.

2. Duty to Register with the DIR: The contractor must register online with the DIR to be eligible to perform public work and must be able to provide proof of registration for the duration of the project. Lack of registration will make the contractor ineligible to perform work and may result in forfeiture of the contract.

3. Duty to Notify of Unusual Work Hours: The contractor will notify and obtain approval from the Awarding Body prior to performing work on any Sunday, on any holiday, before 7:00 a.m., or after 5:30 p.m.

4. Duty to Cooperate with On-Site Interviews: The contractor must allow the LCO or their representatives to interview employees without interference. Interviewed employees must not be threatened, intimidated, or coerced.

5. Duty Not to Retaliate: The Contractor agrees that no worker will be discharged, disciplined, or in any other manner discriminated against because he or she has made a complaint against his employer, has filed a governmental complaint, has instituted or caused to be instituted any proceeding, or has testified or is about to testify in any proceeding.

6. Duty to Submit Labor Compliance Documents: The contractor must submit labor compliance documents throughout the course of this project.

7. Duty to Cooperate with Regard to Subcontractors: Each contractor is responsible for compliance by his subcontractors. The project's Construction

Manager/Project Manager and the LCO may direct the contractor to take certain actions to remedy subcontractor compliance issues.

8. Duty to Comply with All Applicable Laws: It is against the law for an employer or other person to accept any compensation from workers on a prevailing wage project. Anyone found guilty of accepting fees, bribes or any other form of compensation or kickbacks from a worker on a prevailing wage project is guilty of a felony[3]. Any person or company that attempts to charge a fee for registration or information about public works employment is guilty of a misdemeanor.

[3] See California Labor Code §1778.

5 PRE-CONSTRUCTION ACTIVITIES

To ensure compliance, the LCO has a number of responsibilities prior to the start of construction including verifying that contractors are qualified to perform work on a public works project, communicating with contractors regarding their responsibilities under the LCP, notifying the DIR of the project, and starting project files.

5.1 Bid Language

Prior to the release and advertisement of the bid documents, staff should be aware of the appropriate language concerning the requirements of prevailing wage projects as defined by the California Labor Code §1773.2.

The Call for Bids, Design-Build Requests, and the contract or purchase order should contain at a minimum the following language:

- Identification that the project is subject to the payment of prevailing wages;
- Identification of the project as either a project for construction, installation, alteration, demolition, repair, or maintenance work;
- Designation of date payroll records are due (typically monthly);
- Provision that contract payments shall not be made when payroll records are delinquent or inadequate per California Code of Regulations §16421(a)(6);
- Notification that all contractors must register with the DIR as an eligible body in order to perform public work; and
- Notification that all contractors must comply with the LCP.

The Authority must affirmatively represent to the contractor in writing that the work to be covered by the contract or bid is a public works project, as defined by the California Labor Code, subject to the payment of prevailing wages to all workers.

Awarding Bodies must notify contractors of the applicable prevailing wage determinations. In order to do so, a copy of the bid advertisement for the project must be obtained, since the advertisement date[4] determines which prevailing wage determinations are applicable. *For prevailing wage determinations, see Section 8.3*.

[4] The California Code of Regulations states that in the case where there is not a bid advertisement date, the lack of a "notice inviting bids" being published in a newspaper means you must first look for some other form of pre-award notice which may have been "promulgated in a legally sufficient manner" and, if so, utilize that "Date of Notice" for the operative date to locate the applicable prevailing wage determination published by the Director (e.g. Request for Bids due date, date of Pre-Bid Meeting, etc.). If unable to locate any type of pre-award notice which satisfies the "legally sufficient" promulgation standard, the date of the award of the contract (see, Transdyn/Cresci JV v. City and County of San Francisco (1999) 72 Cal. App.4th 746) or, lacking an award date, the date of the contract itself may be selected as the operative date to select the applicable prevailing wage determination.

5.2 Bid Review Activities

Prior to the acceptance of a contractor's bid, the LCO must verify certain information to ensure the contractor is in compliance with applicable law.

a. Obtain Subcontractor Lists

An accurate and complete subcontractor list shall be requested from the prime contractor(s). The LCO shall verify each subcontractor's eligibility to work on a public works project by verifying their DIR registration and license with the California State Licensing Board (CSLB) by following the step below.

b. DIR Registration Verification

Per California Labor Code §1725.5 and §1771.1, all contractors must be registered with the DIR, at all times, in order to bid or perform work on public works projects. The prime contractor and each of their subcontractors must be registered and in good standing with the DIR in order to work on any of The Authority's projects. The following link provides information on contractors' status with the DIR: https://efiling.dir.ca.gov/PWCR/Search.action

The Authority's Project manager shall verify each subcontractor listed is registered with the DIR within 24 hours of receiving the bid proposal and notify the contractor if any are not. If a contractor is notified that a subcontractor is not registered with the DIR and does not rectify the situation, The Authority must reject the contractor's bid.

5.3 Project Start-Up Activities

Once The Authority awards a project, and prior to the Pre-Construction Meeting, staff shall conduct the following project start-up activities:

a. Submit a PWC 100 form to the DIR (*see Appendix J*)

Per, California Labor Code §1773.3, a PWC-100 form must be submitted to the DIR within 30 days of contract award. The form is submitted online at https://www.dir.ca.gov/pwc100ext/. The Authority can be fined for failing to submit a PWC 100 $100 per day in violation up to $10,000.

b. Create a Document Tracking Log

A Document Tracking Log shall be maintained for all projects. The Document Tracking Log is a written record of all LCP-required documents that are required for each project contractors. It also identifies whether a contractor has any compliance issues or unresolved audits. *A sample Document Tracking Log can be found in Section 7*.

Using the submitted Subcontractor List, staff shall do the following into the Document Tracking Log:

- ► Enter all contractor names

- Enter the contractor's license status (e.g. active, expired, etc.) and workers' compensation insurance data should be recorded from the CSLB website
- Enter the contact information for all project contractors. Information that should be recorded includes: contractor address, telephone number, fax number, and the name and email address of the contractor's employee who handles CPR and payroll documents.
- Enter the registration number provided by the DIR to document current registration of each contractor with the DIR which can be found at https://efiling.dir.ca.gov/PWCR/Search.action.
- Enter the work classifications associated with the contractor's scope of work and record the DIR prevailing wage determination that corresponds to each work classification. Section 8.4 presents detailed instruction regarding how to establish the correct prevailing wage determinations. The scope of work for listed subcontractors is typically included in the contractor's bid.

It should also be noted that subcontractors may sub out some of their work to lower-tier subcontractors not listed on the subcontractor list submitted by the prime contractor and/or sometimes subcontractors are replaced on the job. As soon as the LCO becomes aware of a new subcontractor on the job, the subcontractors' license, workers compensation, and DIR status must be verified. The Authority's Project Manager must be notified immediately if the subcontractor is unregistered, debarred, or otherwise not in good standing with any of the above.

5.4 Pre-Construction Meeting

The Pre-Construction Meeting is held by The Authority before commencement of the work. Attendees include representatives from The Authority, the construction manager, the design engineer, the construction contractor, subcontractors, and other project stakeholders. All aspects of the construction project are discussed at the Pre-Construction Meeting including the responsibilities of the contractor and subcontractors regarding the labor compliance program. All subcontractors should attend the Pre-Construction Meeting.

Prior to the Meeting, an agenda and informational packets regarding The Authority's LCP shall be prepared. Each required LCP form should include The Authority's logo. The LCP informational packets shall include the following:

a. Cover Sheet (summarizing the contents of the packet) with a business card. The cover sheet will serve as the Pre-Construction Meeting Agenda/discussion format

b. DIR Determination Sheet, contains:

   i. The DIR determination applicable to the project;

   ii. The DIR determination website link.

c. "LCP Contractor Responsibilities & Requirements" summary sheet

d. LCP Sample Forms

i. State that the sample LCP forms may be substituted by the contractor's own forms so long as the same required information is included.

ii. Included in the sample forms is the "LCP Checklist of Labor Law Requirements" (*Attached as Appendix L*)

e. Document Submittal Protocol Sheet: Informs the contractor of the appropriate staff person to which required documentation should be submitted; also summarizes The Authority's progress payment policies, such as the penalties for non-compliance, including the withholding of contract payments when payroll records are delinquent or inadequate. May also outline the process by which the LCP staff will provide the management team with a monthly progress payment recommendation based on the contractor's LCP compliance status (including both timely documentation and timely resolution of issues).

f. A copy of the DIR prevailing wages for all potential trades to be used on the project shall be provided to the Prime Contractor.

g. Information on how to receive a copy of The Authority's LCP.

h. Information on how to receive a copy of the California Labor Code relating to Public Works and Public Agencies (Part 7, Chapter 1, §§1720-1861).

Sample forms to be included in the LCP informational packet are included in Appendices L-S.

HOW TO: Conduct a Pre-Construction Meeting

The following should occur at the Pre-Construction Meeting:

- Staff makes the following points:
  - This is a public works project. Mention the funding source (e.g., "This project is funded by the Proposition 84 and therefore requires LCP oversight.")
  - All workers must be paid prevailing wages as required by the LCP and established prevailing wage laws
  - The Authority has implemented and will enforce an LCP. LCP staff will be monitoring and enforcing prevailing wage compliance on this project.
- An attendance sheet should be distributed at the meeting; retain a copy of the attendance sheet for cross-referencing against the contractor's sub-list. Note: Referencing the sub-list for the project, note any contractors that are not present for the pre-con meeting as the pre-construction meeting packets will be mailed to any contractors that were not in attendance. If the sub-list is not available at the time of the pre-construction meeting, send LCP packets to all remaining contractors once it is obtained.

- Attendees will introduce themselves, and state their trade or the role they will perform on the project. For each contractor that is present at the meeting, obtain the contact name for the individual(s) that handle CPR preparation and submittal and labor compliance issues for the contractor. Obtain copies of business cards and indicate the CPR contact person's name upon each card for entering into the tracking log once back in the office.

- Staff will then distribute the pre-construction meeting packets containing the DIR determination website link, a copy of applicable labor compliance responsibilities and requirements, a document submittal schedule, and blanks/samples of the required LCP submittal forms.

- Staff will then begin to provide an overview of the LCP requirements, including the responsibilities of the contractor and monitoring and enforcement compliance activities. Staff will then review the contents of the pre-con meeting packets, using the cover sheet as a guide to conduct the remainder of the meeting.

- When reviewing the packet, the following contractor responsibilities should be discussed during the most appropriate portion of the agenda:

  1. The contractor must submit a DAS 140 to notify the DAS (prior to the start of work) when using apprenticeable trades on a public works project and to submit certification of apprentices.

     - To be submitted within 10 days after the awarding of the contract and no later than the start of work
     - Should be sent to the local apprenticeship committee
     - NOTE: contractors who are approved to train apprentices must send the DAS 140 to their apprenticeship committee
     - NOTE: contractors who are not approved to train apprentices must send the DAS 140 to all applicable apprenticeship committees in their geographic region; contact information which can be obtained from the DAS website
     - For more information on submittal and review of the DAS 140 form, please see Section 6

  2. The contractor must submit all required reports: CPRs, Trust Fund Reports, and any other reports that verify the payment of prevailing wages. CPRs shall be furnished by the contractor at times designated in the contract, which shall be at least monthly, or within 10 days of any request.

  3. The contractor must submit evidence that training fund contributions were paid to the California Apprenticeship Council (CAC) or to an approved fund (such as a union trust fund).

     Contractors that pay training funds to the CAC must submit a Training Fund Contributions form (CAC 2) each month covering every craft and every hour worked in that craft, for all apprenticeable crafts. Contractors who pay to other

approved funds must submit monthly reports sent to those funds. A sample CAC 2 form is included as Appendix S.

4. The contractor must be registered with the DIR and submit CPRs monthly to the DIR, as required by Senate Bill (SB) 854 and as detailed in the California Labor Code §§1771.1 and 1771.4

5. The contractor must submit a complete list of subcontractors.

6. The contractor must make restitution payments when wage violations are found.

7. The contractor must submit a Fringe Benefit Statement with the 1st CPR.
    - Note: Training Fund Contributions are never paid to the employee
    - If fringe benefits are paid to a Union or Employer's Trust Fund, the contact information should be included in the designated place
    - If benefits are paid in cash to the worker, the benefit dollar amount should be included in the designated place and state "paid to worker" in the contact information area
    - Information must be included for every craft and classification of worker that will be employed on the project, including for apprentice levels that may perform work on the project.
    - An updated Fringe Benefit Statement must be submitted whenever there are increases to the employee fringe benefits.
    - A sample Fringe Benefit Statement is included as Appendix O.

8. The contractor must submit Trust Fund Reports, which are only applicable to contractors paying benefits to a plan, program, or trust (such as union-signatory contractors).
    - Should be submitted monthly or at least once a quarter
    - Copies of contribution checks must be submitted at least once a quarter

9. CPRs – the following points regarding CPR review are crucial:
    - A signed Statement of Compliance must be attached to all payroll reports in order to make them "certified".
    - CPRs and Statements of Compliance shall be submitted for every week that work is performed; a non-performance payroll report should be submitted for weeks where no work was performed.
    - Explain that each entry on the form must be completed accurately.
    - Advise attendees that the appropriate withholding (including fringe benefits and union dues, if applicable) must be deducted from gross wages and forwarded to the appropriate taxing agency and/or trust fund.
    - Last payroll should be marked as "FINAL." The final CPR will signal LCP staff to begin closeout procedures.

- Advise attendees that computer-printed payroll forms are acceptable, if they contain all the necessary data from California Labor Code §1776(a).
- CPRs may be maintained and submitted electronically subject to all of the following conditions:
    - The reports must contain all of the information required by California Labor Code §1776.
    - The reports shall be in a format and use software that is readily accessible and available to contractors, awarding bodies, LCPs, and the DIR.
    - Reports must be in the form of a non-modifiable image or record that bears an electronic signature or includes a copy of any original certification made on paper.

- Explain to attendees that labor compliance staff responsibilities will include the following:

    1. To receive, review and audit CPRs.

    2. To notify all project contractors of delinquent documents by email on a monthly basis.

    3. To advise contractors of discrepancies found by means of audit reports.

    4. To perform weekly on-site monitoring.

    5. To notify the Construction Manager when the prime contractor has completed work and when all LCP .

    6. To collect the LCP Checklist. Projects under an LCP require that the LCO distribute an LCP Checklist. The LCP Checklist must be signed by every contractor assigned to the project and returned to staff, who will include it in project files. The checklist is required when a case is reported to the Labor Commissioner for the withholding of contract payments or if a Notice of Forfeitures is issued. *A sample LCP Checklist is included as Appendix L*.

    7. To provide monthly invoice payment recommendations to the Construction Manager based on the contractor's level of compliance.

9. Address other pre-construction meeting topics, including: record keeping requirements, any recent changes in federal and/or state regulations, and available resources along with types of assistance provided.

F O C U S

Legally required forms contractors are required to submit include:

- Checklist of Labor Law Requirements
- Public Works Contract Award Information (DAS 140)
- Statement of Compliance
- Fringe Benefit Statement
- CPRs
- Training Fund Contribution (CAC 2 or Trust Fund Report)
- Trust Fund Report (if fringe benefits are paid into a union or private plan)
- Owner-Operator Listing (if Owner-Operators are used)
- Contractor's certification concerning Labor Standard and Prevailing Wage Requirement (for Federally-funded contracts)
- Statements of Non-Performance

Before a contractor begins work on a project, that contractor must submit an LCP Checklist, and a DAS 140. Note that the original DAS 140 must be sent to the union or apprenticeship committee for the appropriate craft. Staff should receive a copy of the form and proof of transmittal.

6 REVIEWING DAS REQUIREMENTS

All Public Works Projects are subject to the 5:1 Journeyman/Apprentice Ratio, where apprenticeable crafts must utilize one apprentice hour of work for every five journeyman hours of work. With this requirement come required documentation and notification to the appropriate apprenticeship programs.

6.1 LCP Duties Regarding Apprentices

The duties of an LCP with respect to apprenticeship standards, according to California Code of Regulations §16434(c), are the following:

(A) Inform contractors and subcontractors bidding public works about apprenticeship requirements, including submitting a DAS 140 Public Works Award Contract Information to all approved apprenticeship programs in the county where the work is being performed for each work classification used and to also submit a DAS 142 Request for Dispatch of Apprentice to the same programs (see forms below);
(B) Send copies of awards and notices of discrepancies to the DAS as required under California Labor Code §1773.3; and
(C) Refer complaints and promptly report suspected violations of apprenticeship requirements to the DLSE.

Listings of DAS-approved apprenticeship programs by trade and by county can be found at: http://www.dir.ca.gov/databases/das/aigstart.asp

Sample DAS 140 and DAS 142 forms are included as Appendices M and N below.

6.2 Prevailing Wage for Apprentices

Prevailing wage pay requirements for apprentices will be enforced consistent with the practice of the Labor Commissioner, including:

(A) That any contributions required pursuant to California Labor Code §1777.5(m) are paid to the appropriate entity;
(B) That apprentices are paid no less than the prevailing apprentice rate;
(C) That workers listed and paid as apprentices on the certified payroll records are duly registered as apprentices with the DAS; and
(D) That the regular prevailing wage rate has been paid (i) to any worker who is not a duly registered apprentice and (ii) for all hours in excess of the maximum ratio permitted under California Labor Code §1777.5(g), as determined at the conclusion of the employing contractor or subcontractor's work on the public works contract.

As stated in Section 5.5 above, The Authority shall, within 30 days of the award, send a copy of the award to the DIR. The form may be submitted online at https://www.dir.ca.gov/pwc100ext/. *A copy of a blank PWC-100 is included as Appendix J.*

Registered apprentices may be paid an apprentice prevailing wage rate that is published by the DIR, and is typically a percentage of the journeyman wage for the appropriate craft. A contractor may only pay this lower prevailing wage rate to bona fide, active apprentices who are registered with the DAS. If an apprentice is employed in any other craft than the one for which s/he is a registered apprentice (such as an apprentice Sheet Metal Worker performing Laborer work), the full journeyman wage rate for that craft must be paid. Verification of whether a worker is registered with the DAS can be done by accessing the DAS Apprentice Search website:

http://www.dir.ca.gov/DAS/appcertpw/AppCertSearch.asp

A screenshot of the DAS Apprentice Search Website is shown below.

Each DAS registered apprentice is given a certification number. As shown in the screenshot above, the certification number is the first four letters of their last name, the first letter of their first name, and then the last four digits of their social security number.

The union "Apprentice Agreement" (DAS1 Rev. 7/87) is not acceptable proof of registration since it does not indicate whether the worker is currently in the program. If the certification cannot be found online, contractors must submit a letter from the DAS as evidence of registration[5].

A contractor's failure to pay the apprentice rate, or the payment of the apprentice rate to a worker not registered as an apprentice, is a prevailing wage underpayment, and should be investigated and audited in the same way as other prevailing wage underpayments.

6.3 Apprentice Usage Requirements

There are regulations for both the maximum and minimum allowable ratios of apprentices to journeymen. As a general rule, contractors must use a **minimum** of one hour of apprentice work to five hours of journeyman work, or 16.7% of total hours performed by apprentices per California Labor Code §1777.5(g). Please note; however, that California Labor Code §1777.5 does allow for exceptions to the 1:5 ratio. California

[5] See California Labor Code §1777.5(c).

Labor Code §1777.5(h) states that "(w)here an hourly apprenticeship ratio is not feasible for a particular craft or trade, the Administrator of Apprenticeship, upon application of an apprenticeship program, may order a minimum ratio of not less than one apprentice for each five journeymen in a craft or trade classification." California Labor Code§1777.5(k) also allows an apprenticeship program the discretion to grant a participating contractor an exception, subject to approval by the DAS. If the contractor can provide documentation from the DAS or a DAS-approved certificate from their apprenticeship program stating that they are exempt from the 1:5 ratio they will not be required to meet it.

Not all crafts are apprenticeable, though most are. An example of a non-apprenticeable craft is Asbestos/Lead Abatement workers. An apprenticeable craft is denoted with a pound sign (#) next to the craft name upon the DIR prevailing wage determination.

The DAS collects the **maximum** ratios of apprentices to journeymen set by each approved apprenticeship program. The correct ratios can be obtained by contacting the DAS District Office; office locations can be found on the DAS website:

http://www.dir.ca.gov/DAS/das_offices.htm

The Labor Commissioner may grant a certificate exempting the contractor from the journeyman to apprentice ratio under certain conditions[6].

Within five days of finding any discrepancy regarding the ratio of apprentices to journeymen, staff must notify the DLSE[7]. Minimum ratios are calculated at the end of the contract or subcontract; a contractor who falls behind on apprentice usage may seek to make up the difference before project completion. It is best practice to perform an analysis of apprentice ratios during the project – halfway through a smaller project, or every six months on a longer project – in order to be able to warn out-of-compliance contractors while they still have time to achieve compliance.

If the contractor is determined by the Labor Commissioner to have knowingly violated California Labor Code, the contractor may be penalized up to $100 per calendar day of noncompliance, and, may be refused the right to bid on, be awarded or perform work on any public works contract for a up to three years[8]. If a subcontractor is determined to have knowingly violated California Labor Code, the prime contractor is not liable for any penalties unless the contractor had knowledge of the subcontractor's failure to comply; the contractor failed to provide copies of California Labor Code §§1771, 1775, 1776, 1777.5, 1813 and 1815 to the subcontractor; failed to consistently monitor a subcontractor's compliance, including, but not limited to, periodically reviewing Certified Payroll Reports; failed to collect a declaration of apprenticeship compliance from the

[6] See California Labor Code §1777.5(i) through (p).

[7] See California Labor Code §1773.3.

[8] See California Labor Code §§1777.7(a) through 1777.7(g).

subcontractor; or failed to take appropriate action when made cognizant of subcontractor noncompliance.[9]

[9] See California Labor Code §1777.7(d).

7 DELINQUENT PAYROLL RECORDS AND WITHHOLDING PROCESS

It is important to maintain accurate records regarding received CPRs and other documents from contractors. The documents that can be requested under an LCP's authority are those which meet the definition of "Payroll Record" in California Code of Regulations §16000: "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."

An example of the Document Tracking Log is seen below. Document Tracking Logs are maintained for each project and should be updated on at least a monthly basis in order to monitor the receipt of documents from contractors.

Contractor	LCP Checklist	DAS 140	Sub-list	Fringe Benefit Statement	Latest CPR	Final CPR	Missing CPRs	Latest Trust / Training Fund Reports (month):	Missing Trust / Training Fund Reports (months):	Issues
PRIME: Edge Development	Received	(no direct labor)		(no direct labor)						
Alert Insulation	Due before work starts	Received		Received				Due after first month of work		
Anning-Johnson Company	Received	Received		Received	8/7/2011		8/7/2011+	Due after first month of work	7/11+	
Hart Brothers Construction dBA: Aquatic Technologies	Due before work starts	Due before work		Due with first CPR				Due after first month of work		
Array Builders, Inc.	Due before work starts	Due before work		Due with first CPR				Due after first month of work		
California Fire Sprinkler Company, Inc.	Due before work starts	Due before work		Due with first CPR				Due after first month of work		
C M F, Inc.	Received	Received	Received, Harwood	Due with first CPR				Due after first month of work		
Commercial Scaffolding of CA, Inc.	Received	Received		Received						
Conco Pumping	Due before work starts	Received		Received				Due after first month of work		
Crown Fence	Received	Received		Received	4/3/11	4/3/2011		3/11	None	

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Pursuant to California Code of Regulations §16435(e) and California Labor Code §1771.5(b)(5), the withholding of contract payments when payroll records are delinquent or inadequate is required and does not require prior approval of the Labor Commissioner. The Authority shall only withhold those payments due or estimated to be due to the contractor or subcontractor whose payroll records are delinquent or inadequate. When contractor payments are withheld due to delinquent or inadequate payroll records, The Authority shall follow the processes outlined in California Code of Regulations §16435(f-g). Once the delinquent payroll records are received and/or the issue with inadequate payroll records has been resolved, contract payments will be released. Note that penalty assessment for delinquent or inadequate payroll records not submitted in the time frame specified under California Labor Code §1776(h) requires approval from the Labor Commissioner.

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

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

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

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

Contractor or subcontractor whose payroll records are delinquent or inadequate:

_____

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

_____

_____

_____

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

_____

_____

_____

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

_____

_____

Labor Compliance Officer

8 DOCUMENT REVIEW PROCESS

8.1 Reviewing CPRs

If possible, before the project begins, call all contractors and subcontractors assigned to work on the project to find out who the designated payroll agent is (unless this was already done at the pre-construction meeting); this is likely the person who will certify payrolls. Record this person's name and phone and fax numbers onto the "Contractor Documentation Filing" cover sheet and the project's electronic Document Tracking Log.

Once a contractor begins work on a project, the LCO will begin receiving certified payroll records. California Labor Code §1776 requires contractors to submit the CPRs to The Authority and to the Labor Commissioner directly. CPRs must be submitted immediately after the first week of work on the jobsite, and then weekly thereafter, but in no case less than monthly. Orderly review of payroll records, including audits to verify compliance with requirements, is key to the effective implementation of the LCP.

An example of a CPR is attached as Appendix P.

California Code of Regulations §16404 states that payroll records may be submitted electronically, subject to all of the following conditions:

(a) The reports must contain all of the information required by California Labor Code §1776, with the information organized in a manner that is similar or identical to how the information is reported on the DIR's suggested "Public Works Payroll Reporting Form" (Form A-1-131);

(b) The reports shall be in a format and use software that is readily accessible and available to contractors, awarding bodies, LCPs, and the DIR;

(c) Reports submitted to The Authority, an LCP, the DLSE, or other entity within the DIR must be either (1) in the form of a non-modifiable image or record that bears an electronic signature or includes a copy of any original certification made on paper, or alternatively (2) printed out and submitted on paper with an original signature;

(d) The requirements for redacting certain information shall be followed when certified payroll records are disclosed to the public pursuant to California Labor Code §1776(e), whether the records are provided electronically or as hard copies; and

(e) No contractor or subcontractor shall be mandated to submit or receive electronic reports when it otherwise lacks the resources or capacity to do so, nor shall any contractor or subcontractor be required to purchase or use proprietary software that is not generally available to the public.

The LCO reviews CPRs to verify that the contractor and all subcontractors are paying the specified prevailing wage rate to all workers. Depending on the project, CPRs for subcontractors may be sent by the prime contractor or directly to staff by the subcontractor. All CPRs must also be sent to the DIR.

The LCO shall check that weekly payroll records comply with the California Code of Regulations §16421(a)(3) as well as California Labor Code §1776(a) and §1776(b), to the extent described in California Code of Regulations §16432(c)[10], as outlined in Section 8.2. CPRs must be reviewed as promptly as practicable after receipt thereof, but in no event more than 30 days after receipt[11]. "Review" for this purpose shall be defined as inspection of the records furnished to determine if (1) all appropriate data elements identified in California Labor Code §1776(a) have been reported; (2) certification forms have been completed and signed in compliance with California Labor Code §1776(b); and (3) the correct prevailing wage rates have been reported as paid for each classification of labor listed thereon, with confirmation that payments were made.

Confirmation of CPRs: For projects requiring an LCP (such as Proposition 84 funded project, *see Section 2.1*) there is an additional requirement known as payroll confirmation. Per California Code of Regulations §16432(c), "each month in which a contractor or subcontractor reports having workers employed on the public work, confirmation of furnished payroll records shall be undertaken randomly for at least one worker for at least one weekly period within that month." "Confirmation" of payroll records furnished by contractors is defined as an independent corroboration of reported prevailing wage payments. Confirmation may be accomplished through worker interviews, examination of paychecks or paycheck stubs, direct confirmation of payments from third party recipients of "Employer Payments", or any other reasonable method of corroboration. Confirmation shall also be undertaken whenever complaints from workers or other interested persons or other circumstances or information reasonably suggest to the Program Staff that payroll records furnished by a contractor are inaccurate.

8.2 Essential Information on CPRs

All information requested pursuant to California Labor Code §1776(a) and listed on the DIR's suggested format "Public Works Payroll Reporting Form" (Form A-1-131), is expected to be furnished. This information is detailed below.

CPRs must contain the following required information per California Labor Code §1776(a):

- Employee's full name

[10] See California Code of Regulations 2009 Amendments to §16432.

[11] See California Code of Regulations 2009 Amendments to §16432.

- Address (on first payroll submitted)

- Social Security Number: California Labor Code §226(a), which is not part of the Public Works Chapter, directs an employer to use only the last four digits of an employee's social security number on itemized payroll deduction statements furnished to the employee. The section does not affect a contractor's obligation under California Labor Code §1776(a) to provide the full Social Security number on certified payroll records and under §1776(b)(2), to furnish DLSE, DAS, DIR and awarding bodies with unredacted records displaying the full on request.

- Work classification: This is important because it dictates which prevailing wage determination to apply and on-site observations may reveal that the worker is performing work outside the scope of this classification.

- Straight-time hours per day and per week: The contractor must not employ a worker more than eight hours in a calendar day or more than 40 hours in a calendar week, unless the contractor pays the appropriate overtime wage rate. In some cases, employees may be working on a modified work schedule. In such instances, the contractor must submit all documentation that modifies the work schedule. If the contractor cannot provide documentation that supports the validity of such modifications to the work schedule, then the prevailing wage stands. California Code of Regulations §16200(a)(3)(F) allows for the following exceptions:

    - Exception 1: If a workweek other than Monday through Friday is a fixed business practice or is required by the awarding body, no overtime payment is required for the first eight hours on Saturday or Sunday.
    - Exception 2: If the collective bargaining agreement provides for Saturday and Sunday work at straight-time, no overtime payment is required for the first eight hours on Saturday or Sunday.
    - Exception 3: If the awarding body determines that work cannot be performed during normal business hours or work is necessary at off hours to avoid danger to life or property, no overtime is required for the first eight hours in any one calendar day, and 40 hours during any one calendar week.
    - Exception 4: No overtime payment is required for less than 40 hours in a standard work week or for less than eight hours in a calendar workday unless specified in the collective bargaining agreement used as the basis for the prevailing wage determination.

- Overtime hours per day and per week

- Itemized deductions, including Federal Taxes, FICA (Social Security), State Taxes, SDI, and any other deductions (which must be explained in the Statement of Compliance)

- Payroll check numbers

- Actual per diem wages paid: Per Diem wages include employer payments for health and welfare, pension, vacation, travel time, and subsistence pay as provided for in California Labor Code §1773.1, as well as for apprenticeship or other training programs authorized by California Labor Code §3093. (Note that while union contractors are required to pay fringe benefits into union trust funds per their union contract, non-union contractors can choose to pay all of the total hourly wage, with the exception of the training fund payments, as part of the employee's basic hourly rate. The training fund payments must be made to an approved apprentice program or the CAC)

- Gross wages paid for this project, as well as gross and net wages paid for all projects.

- Contractor's full name and address

- Project name and locations

- Dates of payroll (for added convenience of auditing and filing, contractors should be encouraged to number their payroll consecutively for each week)

- Payroll check numbers for each employee

8.3 How to: Determine a Prevailing Wage Rate

The DIR publishes prevailing wage determinations twice a year, on February 22 and August 22. The rates go into effect ten (10) days after publication – March 4 (March 5 during leap years) and September 1.

Correct prevailing wage rates can be verified on the DIR's website:

http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm

The steps to determine the prevailing wage rate for a given craft and project are as follows:

1. **Find the applicable determination.** The applicable determination is the one in effect at the time the project is first advertised for bids. The two yearly determinations are named with the year followed by a "1" or "2" – so the determination published on February 22, 2010 is "2010-1," and the one published on August 22, 2010 is "2010-2." Older determinations are collected on the site under "Superseded prevailing wage determinations."

2. **Find the appropriate craft.** Some crafts have prevailing wages that are valid throughout the state; some are valid throughout Southern California; and some are valid only in Los Angeles County. Multiple places to find the craft you need may need to be checked.

3. **Look up the rate.** The determination contains a "Basic Hourly Rate" and a "Total Hourly Rate." The Total Hourly Rate is the required total value of all wages and fringe benefit payments; the Basic Hourly Rate is the minimum rate that can be paid to workers on their paychecks, for contractors who pay the fringe benefit amounts to a trust fund or benefit plan.

4. **Check for predetermined increases.** Each determination is published with either a single asterisk (*) or double asterisk (**) after the expiration date. Determinations with a single asterisk will remain valid for the duration of the project; those with a double asterisk (**) have predetermined rate increases that must be taken into account.

5. **Look up increases, if necessary.** All predetermined increases for trades with county by county determinations can be found in a separate tab/worksheet within the determination worksheet. All predetermined increases for other trades can be found by selecting "increases" the pull down menu.

6. **Take fringe benefits and training funds into account.** A contractor's Fringe Benefit Statement will state the hourly rate of fringe benefit contributions that are made; the wage rate plus the total of all those contributions must equal or exceed the Total Hourly Rate. Many non-union contractors do not have benefit funds and pay the entire prevailing wage directly to the workers on their checks. It is important to note that the amount listed for "Training" may **not** be paid this way; it can only be paid to an approved apprenticeship program or to the CAC. Verification of payment to the appropriate entity can be done by providing The Authority a copy of the canceled check, as well as a breakdown of hours performed by each worker. *An example of the CAC 2 Training Fund Contributions Form submitted to the CAC can be found in Appendix S.*

Example Prevailing Wage Calculation

Say we wanted to find the prevailing wages due to a Carpenter working on a project on March 13, 2011. The project was first advertised for bids on January 17, 2009. Let's follow the steps above. **Find the applicable determination.** The project was bid after the second prevailing wage determination of 2008 went into effect (September 1, 2008), but before the first determination of 2009 went into effect (March 4, 2009). The applicable determination is **2008-2**.

Find the appropriate craft. The screenshots below show the links to follow when looking for the Carpenter classification. It can be found at the "Southern California" link.

1. **Look up the rate**. As can be seen on the screenshot, the total hourly rate listed is $47.22.

2. **Check for predetermined increases.** The determination expired on June 30, 2009, and has two asterisks (**). There will be one or more predetermined increases applicable.

3. **Look up increases, if necessary.** There was an increase of $1.00 as of July 1, 2009, and an increase of $0.50 as of July 1, 2010. A further increase is applicable as of July 1, 2011, but it was not yet in effect on March 13.

4. **Take fringe benefits and training funds into account.** The contractor's Statement of Compliance and Fringe Benefit Statement do not list any pension, health, or other programs. Therefore, we expect the entire prevailing wage to be paid on the worker's check, except for $0.42 which is due for training and may not be paid to the worker.

The prevailing wage is: $47.22 + $1.00 + $0.50 = $48.72. Of this amount, $0.42 must be paid to an apprenticeship (training) fund. The CPR should show a payment of at least $48.30 per hour.

Determine the prevailing wages due to a Carpenter working on a project on March 13, 2011. The project was first advertised for bids on January 17, 2009. The prevailing wage determination will be established using the steps outlined in Section 8.4.

1. **Find the applicable determination.** The project was bid after the second prevailing wage determination of 2008 went into effect (September 1, 2008), but before the first determination of 2009 went into effect (March 4, 2009). The applicable determination is **2008-2**.

2. **Find the appropriate craft**. The screenshots below show the links to follow when looking for the Carpenter classification. It can be found at the "Southern California" link. *Please see Figure 8.4.1.*

General prevailing wage determinations: 2008-2 journeyman determinations

General prevailing wage determinations made by the director of industrial relations

Pursuant to California Labor Code part 7, chapter 1, article 2, sections 1770, 1773, and 1773.1

To locate a particular journeyman craft or classification's prevailing wage determination, holiday, advisory scope of work, or travel and subsistence provision, please follow the six steps in the table below:

Step one	Statewide	First examine if your craft's determination is among the basic trades that apply to most counties in California.
Step two (A)	Northern California	If you have not found your craft in step one, check this area to see if your craft's determination is one of Northern California's basic trades.
Step two (B)	Southern California	If you have not found your craft in step one, check this area to see if your craft's determination is one of Southern California's basic trades.
		After following steps one and two (B), examine this area if your

Figure 8.4.1 General Prevailing Wage Determination

After clicking on "Southern California", the following screen will appear. Follow the link for "Carpenter." *Please see Figure 8.4.2.*

Page	Determination	Holidays, scope of work, travel & subsistence	Predetermined increase
3	Asbestos Worker, Heat and Frost Insulator (d)	Select One	Increase
18D	Asbestos and Lead Abatement (Laborer) (e)	Select One	Increase
10E	Building/Construction Inspector and Field Soils and Material Tester +	Select One	Increase
12A	Boilermaker (for Pipelines) (e)	Select One	No increase *
4	Carpenter	Select One	Increase
10A-10B	Cranes, Pile Driver and Hoisting Equipment (Operating Engineer) +	Select One	Increase
20	Cement Mason	Select One	No increase *

Figure 8.4.2 Carpenter Determination

3. **Look up the rate**. As can be seen on the screenshot, the total hourly rate listed is $47.22.

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

CRAFT: # CARPENTER AND RELATED TRADES

DETERMINATION: SC-23-31-2-2008-1
ISSUE DATE: August 22, 2008
EXPIRATION DATE OF DETERMINATION: June 30, 2009** The rate to be paid for work performed after this date has been determined. If work will extend past this date, the new rate must be paid and should be incorporated in contracts into now. Contact the Division of Labor Statistics and Research at (415) 703-4774.

LOCALITY: All localities within Imperial, Inyo, Kern, Los Angeles, Mono, Orange, Riverside, San Bernardino, San Luis Obispo, Santa Barbara, and Ventura counties.

Classification (Journeyperson)	Basic Hourly Rate	Employer Payments: Health and Welfare	Pension	Vacation/ Holiday	Training	Other	Straight-Time: Hours	Total Hourly Rate	Overtime Hourly Rate: Daily[a] 1 1/2X	Saturday[b] 1 1/2X	Sunday and Holiday
AREA 1											
Carpenter[c], Cabinet Installer, Insulation Installer, Hardwood Floor Worker, Acoustical Installer	$37.35	$3.95	$1.91	$3.30[f]	$0.42	$0.29	8	$47.22	$65.895	$65.895	$84.57
Pile Driverman[c], Derrick Bargeman, Rockslinger, Bridge or Dock Carpenter, Cable Splicer	37.48	3.95	1.91	3.30[f]	0.42	0.29	8	47.35	66.09	66.09	84.83
Bridge Carpenter[c]	37.48	3.95	1.91	3.30[f]	0.42	0.29	8	47.35	66.09	66.09	84.83

Figure 8.4.3 Carpenter Hourly Breakdown

4. **Check for predetermined increases.** The determination expired on June 30, 2009, and has two asterisks (**) (as shown in the above figure after the Expiration Date. There will be one or more predetermined increases applicable.

5. **Look up increases, if necessary.** Return to the previous page and click on the "Increase" link. *Please see Figure 8.4.4.*

Page	Determination	Holidays, scope of work, travel & subsistence	Predetermined increase
3	Asbestos Worker, Heat and Frost Insulator (d)	Select One	Increase
18D	Asbestos and Lead Abatement (Laborer) (e)	Select One	Increase
10E	Building/Construction Inspector and Field Soils and Material Tester +	Select One	Increase
12A	Boilermaker (for Pipelines) (e)	Select One	No increase *
4	Carpenter	Select One	Increase
10A-10B	Cranes, Pile Driver and Hoisting Equipment (Operating Engineer) +	Select One	Increase
20	Cement Mason	Select One	No increase *

Figure 8.4.4 Carpenter Predetermined Increases

There was an increase of $1.00 as of July 1, 2009, and an increase of $0.50 as of July 1, 2010. A further increase is applicable as of July 1, 2011, but it was not yet in effect on March 13, 2011.

CARPENTER: All classifications (except Scaffold Builder):
Determination SC-23-31-2-2008-1 is currently in effect and expires on June 30, 2009**.

Effective on July 1, 2009, there will be an increase of $1.00 to be allocated to Pension. (See modification notice dated June 29, 2009)

Effective on July 1, 2010, there will be an increase of $0.50 to be allocated to pension. (See Important Notice dated June 24, 2010)

Effective July 1, 2011, there will be an increase of $0.75 to be allocated to wages and/or fringes. (See Important Notice dated June 24, 2010)

Figure 8.4.5 Carpenter Predetermined Increase Breakdown

6. **Take fringe benefits and training funds into account.** The contractor's Statement of Compliance and Fringe Benefit Statement do not list any pension, health, or other programs. Therefore, we expect the entire prevailing wage to be paid on the worker's check, except for $0.42 which is due for training and may not be paid to the worker.

   The prevailing wage is: $47.22 + $1.00 + $0.50 = $48.72. Of this amount, $0.42 must be paid to an apprenticeship (training) fund. The CPR should show a payment of at least $48.30 per hour.

   Alternatively, a Master Prevailing Wage Worksheet should be updated on a regular basis. This Worksheet can provide all of the information above related to each specific prevailing wage. This is a live document that requires input from the LCO to maintain its usefulness.

8.4 Other Documents to Review

- **Statement of Compliance:** CPRs submitted must be accompanied by a Statement of Compliance, signed in ink by the contractor or the designated agent, attesting that the payrolls are correct and complete and that the wage rates are not less than those set by the applicable wage determination.

  A CPR submitted without a Statement of Compliance is considered incomplete or inadequate and shall be subject to withholding and/or a recommendation for a penalty.

  Where do contractors get a Statement of Compliance? Here are the following options:

  1. The format for reporting records requested pursuant to California Labor Code §1776 shall be on a form provided by the public entity.
  2. Copies of the forms may be procured at any office of the DLSE through the state.
  3. Acceptance of any other format shall be conditioned upon the requirement that the alternate format contain all of the information required pursuant to California Labor Code §1776.

  Typically, contractors who are signatory to collective bargaining agreements (union contractors) check "Box A" on the Statement of Compliance, indicating

that they are paying fringe benefits into an approved plan, fund or program. Most non-union contractors check "Box B" in order to indicate that fringe benefits are paid in cash; however, non-union contractors also have the option to pay their workers' fringe benefits into a company sponsored plan, fund, or program (e.g. Health Net, John Hancock Pension Program, Kaiser, etc.). A contractor must submit the appropriate supporting documents in order to receive credit for these payments.

An example of a Statement of Compliance is attached as Appendix Q.

- **Fringe Benefit Statement:** The contractor must prepare a Fringe Benefit Statement, and must submit it along with the first payroll. The Fringe Benefit Statement is to be resubmitted when the contribution amounts change.

  The contractor can pay fringe benefits in two ways: 1) pay the benefits to a trustee or third party; or 2) pay the fringe benefits in cash to employees, minus training fund contributions. If a contractor has specified on the Fringe Benefit Statement a union to which contributions are made, he/she should have indicated on the Statement of Compliance that benefits are being paid to an approved plan, fund or program. If the contractor does not make payments to a trustee or other third party, he/she may consider, as part of the wages of any laborer or worker, any costs to provide fringe benefits under another plan. These costs must be verifiable.

  The Fringe Benefit Statement should be compared to 1) the prevailing wage determination, and 2) the Statement of Compliance. Check to make sure the employers' payments match the amounts specified on the determination.

  An example of a Fringe Benefit Statement is attached as Appendix O.

- **Training Fund Contributions Form:** Contractors who employ workers in apprenticeable trades must make training fund contributions either to the CAC or to an approved training program (such as a union trust fund). If using the CAC, the CAC 2 form and copies of contribution checks must be submitted as evidence of payment of the training fund contribution.

  An example of a CAC 2 form is attached as Appendix S.

Contractors who are signatory to collective bargaining agreements must submit the trust fund report and copy of contribution check that they send to the trust fund on a monthly basis. Typically, the reports are due around the 15th of each month for work performed during the month prior. The report should be checked to verify that all workers listed on the CPR for that month were on the trust fund report and that all contributions match the amounts listed on the determination. Any deviations will require the preparation of an audit worksheet.

Alternatively, a Master Prevailing Wage Worksheet is also being updated on a regular basis. This file can provide all of the information above related to each specific prevailing wage. This is a live document that requires input from staff to maintain its usefulness.

A portion of the worksheet is shown below.

	A	B	C	D	E	F	G	H	I	J
1	Prevailing Wage Determination Classification	Bid Ad Year-period (e.g 2007-1)	** or *	Increase Date	Pre-determined Increase Amount	Basic Hrly Rate	Total Hrly Rate	Fringe Cash rate	Training Fund Amount	Amount Paid to Non-Union
23	Carpenter (scaffold)	2009-2	**			$28.55	$39.42	$10.87	$0.42	$39.00
24	Carpenter (scaffold)	2009-2	**	7/1/2010	$0.50	$28.55	$39.92	$11.37	$0.42	$39.50
25	Carpet, Linole (Resi. Tile)	2009-1	**			$30.85	$40.04	$9.19	$0.41	$39.63
26	Carpet, Linole (Resi. Tile)	2009-1	**	5/1/2009	$0.55	$30.85	$40.59	$9.74	$0.46	$40.13
27	Carpet, Linole (Resi. Tile)	2009-1	**	1/1/2010	$1.00	$31.85	$40.59	$8.74	$0.46	$40.13
28	Cement Mason	2009-1	**			$29.50	$48.04	$18.54	$0.45	$47.59
29	Cement Mason	2009-1	*	7/1/2010	$1.45	$29.50	$49.50	$20.00	$0.45	$49.05
30	Cement Mason	2010-2	*		none	$29.50	$49.50	$20.00	$0.45	$49.05
31	Chief of Party	2009-1	**			$41.26	$55.11	$13.85	$0.75	$54.36
32	Chief of Party	2009-1	*	10/1/2009	$2.30	$42.81	$51.80	$8.99	$0.75	$51.05
33	Chainman	2009-2	**			$38.18	$52.03	$13.85	$0.75	$51.28
34	Chainman	2009-2	**	9/30/2009	$2.30	$39.73	$54.33	$14.60	$0.75	$53.58
35	Comm & System Installer	2009-1	*		none	$26.43	$35.03	$8.60	$0.65	$34.38
36	Comm & System Installer	2010-2	**			$26.88	$36.65	$9.77	$0.65	$36.00
37	Comm & System Installer	2010-2	**	11/29/10	$1.65	$26.88	$38.30	$11.42	$0.65	$37.65
38	Comm & System Installer	2010-2	*	2010-2	$0.50	$27.25	$38.80	$11.55	$0.65	$38.15
39	Elevator Constructor	2009-1	*		none	$41.27	$58.81	$17.55	$0.55	$58.26
40	Fire Sprinkler Fitter	2009-1	**			$38.08	$58.33	$20.25	$0.85	$57.48
41	Fire Sprinkler Fitter	2009-1	**	1/1/2010	$0.60	$39.08	$61.53	$22.45	$0.90	$60.63

9 FIELD MONITORING

Jobsite inspections are to be performed randomly and as often as deemed necessary, but not less than once a week per California Code of Regulations §16432(d). Employee interviews are to be conducted during each week that workers are present at the jobsites, pursuant to California Code of Regulations §16432(d).

On-site visits must include visual inspection of the copy of the DIR determination(s) of the prevailing wage rate of per diem wages and of the required jobsite posting listing a telephone number to call for inquiries, questions, or assistance with regard to the LCP[12]. *See Section 9.1 below.*

Employee interviews shall be recorded on the Employee Interview Form. A sample Employee Interview Form is included on the following page.

[12] See California Code of Regulations 2007 Amendments §16432(d).

CONFIDENTIAL CRAFT WORKER INTERVIEW

Client: _____ Project: _____ Date: _____ Time: _____

BASIC INFORMATION

Worker Name: _____

Contractor Name: _____

Interviewer description of work: _____

# of Workers on the crew: _____

CONTACT INFORMATION

Contact Phone: _____

Street Address: _____

City, State, Zip Code: _____

Email: _____

Alternate Phone: _____

☐ INFORMATION GIVEN PREVIOUSLY

CRAFT INFORMATION

List the craft(s) that you perform on this site:

___ BRICKLAYER / TENDER	___ HEAT/FROST INSULATION	___ RESILIENT FLOOR INSTALLER
___ CARPENTER	___ IRON WORKER	___ ROOFER
___ CEMENT MASON	___ LABORER	___ SHEET METAL WORKER
___ DRYWALL FINISHER	___ OPERATING ENGINEER	___ TEAMSTER
___ ELECTRICIAN	___ PAINTER	___ TILE LAYER / SETTER
___ ELEVATOR CONSTRUCTOR	___ PLASTERER	___ OTHER:
___ GLAZIER	___ PLUMBER	

CRAFT INFORMATION

Are you a registered apprentice? If yes, what level of apprenticeship are you at?

List the tools, materials, or machines that you utilize at this job site:

WORK-HOUR INFORMATION

How long have you been working on this project?

When do you usually begin and end your work day?

How many hours a day do you typically work?

Have you worked any overtime at this site?

How do you keep track of hours worked at this site?

PAY INFORMATION

What is your rate of pay on this site?

Do you receive any benefits in addition to wages?

What is your rate of pay for overtime work on this site?

How often and on which day are you paid?

List the method(s) of pay:

Do you recieve an itemized wage statement?

___ YES ___ NO

TRAVEL/SUBSISTENCE INFORMATION

Do you report to this site from home or a company yard?

HOME ___ YARD ___

Do you drive a company vehicle to the site?

YES ___ NO ___

Do you carpool with any co-workers?

YES ___ NO ___

PAYMENT CONFIRMATION (IF AVAILABLE)

Do you have a paycheck stub covering hours worked at this project?

What is the stated rate of pay?

What is the Gross Payment?

What Deductions are shown?

What is the Check #

☐ NO CHECK STUB AVAILABLE

Worker Signature _____

- This is a Public Works Project. Wages are being monitored by The Solis Group. To file a confidential complaint, call us at the number provided to you by your interviewer.

Field Interviewer NAME: _____

- Observations/Notes:

Version 09.08.2014

Follow Up Required ☐

CONFIDENTIAL

9.1 Postings

While on the jobsite conducting worker interviews, staff shall verify that the required notices have been posted in an easily accessible place.

Pursuant to California Code of Regulations §16429(b), a project subject to a LCP must post a notice stating that the project is subject to an approved LCP, the effective date of the Director of DIR's approval, a statement whether the limited exemption from prevailing wages pursuant to Labor Code Section 1771.5(a) applies to contracts under the jurisdiction of the LCP, a telephone number to call for inquiries, questions or assistance with regard to the LCP, and the name of the agent or office administering the LCP.
Prop 84 requires additional jobsite postings acknowledging the 2006 Parks and Water Bond Act as a funding source. The Parks Water Bond Logo must be 1'x1', but there is otherwise no minimum or maximum size for the sign. The sign must meet the California Department of Parks and Recreation and California Department of Transportation standards.

According to California Labor Code §207, employers must also conspicuously post at the place of work or where employees may see it coming from or going to their places of work or at the office or nearest agency for payment kept by the employer, a notice specifying the regular pay days and the time and place of payment.

Additionally, California Labor Code §1773.2 states that a copy of the prevailing wage determination for each craft, classification or type of worker needed to execute the contract must be posted at each jobsite.

ATTENTION:

ALL WORKERS ON THIS PROJECT MUST BE PAID PREVAILING WAGES

- This is a public works project subject to the Watershed Conservation Authority's approved Labor Compliance Program. Approved on ____
- Prime Contractor has copies of all Prevailing Wage Rates
- Call the Labor Compliance Officers if you have questions about:
  - The Labor Compliance Program
  - What your prevailing wages should be
  - Filing a confidential wage complaint

THE SOLÍS GROUP
Labor Compliance Officers
(626) 685-6989

Watershed Conservation Authority

- The limited exemption from prevailing wages pursuant to Labor Code Section 1771.5(a) does not apply.

10 WORKER and THIRD PARTY COMPLAINTS

In addition to monitoring all certified payroll records provided by the contractors, worker and third party complaints of underpayment of prevailing wage rates must be investigated. Workers will be informed that the filing of the complaint is confidential, and that his or her identity will be disclosed to the contractor or subcontractor only after an investigation has occurred and only within the context of an audit worksheet.

Upon receipt of a written complaint alleging that a contractor or subcontractor has failed to pay prevailing wages as required by the California Labor Code, the LCP shall take the following five steps according to California Code of Regulations §16434(b):

(1) Within 15 days after receipt of the complaint, send a written acknowledgment to the complaining party that the complaint has been received and identifying the name, address, and telephone number of the investigator assigned to the complaint;

(2) Within 15 days after receipt of the complaint, provide the affected contractor with the notice required under California Labor Code §1775(c) if the complaint is against a subcontractor;

(3) Notify the complaining party in writing of the resolution of the complaint within ten days after the complaint has been resolved by the LCO;

(4) Notify the complaining party in writing at least once every 30 days of the status of a complaint that has not been resolved by the LCO; and

(5) Notify the complaining party in writing at least once every 90 days of the status of a complaint that has been resolved by the LCO but remains under review or in litigation before another entity.

Occasionally, workers may learn that the project they are working on is subject to prevailing wages and that they are being underpaid. Sometimes, a worker may learn that he has been underpaid after his work on the project is completed.

Investigations in such circumstances are handled as follows:

- Tell the workers that they can submit a complaint. (The complaint form is available in English, Korean, and Spanish; a sample of the English and Spanish complaint forms are attached as Appendix D to this manual). Inform them of the prevailing wage rate for all construction trade classifications in which they worked.
    - Note that the DLSE shall keep confidential all information that may be used to identify any employee who files a complaint, pursuant to California Labor Code §1736.

- If the worker is still employed on the project, ask the worker to keep a log from that date forward along with all check stubs issued by the employer to accurately document all hours worked and wages paid.

If an employee of the contractor reports the violation(s), staff will thoroughly investigate the charge by interviewing the affected employee(s) and analyzing the submitted

documents. If it is determined that a violation has occurred, staff shall prepare a Public Works Audit Worksheet, to be sent to the contractor.

The major components and tasks related to investigations of worker complaints are as follows:

- Gather supporting documents from all available sources to analyze for authenticity
  - For apprentices, http://www.dir.ca.gov/das/das.html
  - For training fund contributions, CAC 2 for the month, or confirmation of payments received from the CAC website
  - Trust Fund Reports
  - Project Sign-In Sheets
  - Employee Interview Sheets
  - Field Investigation Notes Sheets
  - Timesheets
  - Contractor's Payroll Registers
  - Copies of check stubs
  - Interviewing workers or other available witnesses

- Conduct a complete CPR audit and/or project audit

- Review CPRs for errors, inconsistencies, discrepancies, falsification, misclassification, under-reporting and any other omissions that render the records inaccurate where needed by comparing the Inspector of Records daily log with all available records.

- Compliance staff shall specifically advise workers of the following: "Willfully submitting false information on the claim form(s) will result in the entire claim being rejected as not credible."

If a thorough audit does not reveal any evidence of underpayment or other wrongdoing by the contractor, the complaint is closed and the parties will be notified. The complaint is otherwise resolved with the resolution of the audit as described in Section 11 below.

11 AUDITING PROCESS

Audit, investigative and enforcement responsibilities are the most challenging aspects of operating a labor compliance program.

An audit[13] requires comparing payroll records to the best available information as to the actual hours worked and classifications of workers employed on the contract. Audits may be conducted when deemed necessary or upon request of the Labor Commissioner. A sufficiently detailed audit enables the Labor Commissioner to draw reasonable conclusions as to compliance with the California Labor Code and enables accurate computation of underpayment of wages to workers and applicable penalties and forfeitures. Records shall be made available to show that the audits conducted are sufficiently detailed to verify compliance with the requirements of Chapter 1 of Part 7 of Division 2 in the California Labor Code. An example of a sufficiently detailed audit may be found in Appendix B of the California Code of Regulations[14].

Spot Auditing: Spot Auditing is the random audit of a contractor's CPRs. Typically, the LCO will conduct a full review of the first two weeks submitted by the contractor, and ten check a sampling of the workers listed on subsequent CPRs to verify that wages are still being paid correctly. Whenever predetermined increases go into effect, the LCO should again review each CPR fully to verify that the contractor is paying them correctly. The LCO must regularly track which CPRs have been audited and the completion of monthly reports for each of his/her projects to ensure that these activities are being completed on a timely basis

Full Audits of contractor and subcontractor files are performed when issues are uncovered from site interviews, worker complaints, or from spot auditing. If violations of labor standards are occurring, this audit will usually uncover them. A full audit will be conducted on all documents that are submitted, including, but not limited to: CPRs, time cards, bank certified cancelled checks, Monthly Reports to Trustees, Owner-Operator Listings, Fringe Benefit Statements, and apprenticeship forms.

Payroll reports will be compared against employee interview reports (see Field Monitoring Section). If discrepancies are found between the employee interviews, the on-site inspection reports and/or information listed on the payroll reports, staff will initiate a full audit (described below). If clarification is needed as to the actual day, dates, and hours worked, as well as wages paid for labor on the project, additional

[13] The 2009 Amendments to the California Labor Code §16432(e) define audit as: a written summary reflecting prevailing wage deficiencies for each underpaid worker, and including any penalties to be assessed under California Labor Code §1775 and §1813, as determined by the LCP after consideration of the best information available as to actual hours worked, amounts paid and classifications of workers employed in connection with the public work.

[14] See California Code of Regulations §16432 and Appendices A and B for 2006 and 2007 Amendments.

documents, such as timecards (or timesheets), Daily Inspector's Records, cancelled payroll checks, and the payroll register can be requested.

The minimum requirement for a review of certified payrolls (outlined in California Code of Regulations §16432(b)) consists of the following: determine if (1) all appropriate data elements identified in California Labor Code §1776(a) have been reported; (2) certification forms have been completed and signed in compliance with California Labor Code Section 1776(b); and (3) the correct prevailing wage rates have been reported as paid for each classification of labor listed thereon, with confirmation of payment performed as required in California Code of Regulations §16432(c). (*See Section 8.3*)

"Confirmation" of payroll records furnished by contractors and subcontractors shall be defined as an independent corroboration of reported prevailing age payments. Confirmation may be accomplished through worker interviews, examination of paychecks or paycheck stubs, direct confirmation of payments from third party recipients of "Employer Payments" (as defined at section 16000 of Title 8 of the California Code of Regulations), or any other reasonable method of corroboration. For each month in which a contractor or subcontractor reports having workers employed on the public work, confirmation of furnished payroll records shall be undertaken randomly for at least one worker for at least one weekly period with in that month. Confirmation shall also be undertaken whenever complaints from workers or other interested persons or other circumstances or information reasonably sugest ot the LCP that payroll records furnished by a contractor or subcontractor are inaccurate.
If deemed necessary, staff may conduct a random on-site audit of a contractor's office in order to obtain confirmation of the payroll records furnished by a contractor and/or subcontractor as independent collaboration of reported prevailing wages (pursuant to California Code of Regulations §16432(c)). On-site audits should be announced to the contractor in question within a few days' notice and serve to inform the contractor that staff will be at their office on a specified date. A typical on-site audit will review the following records, which shall be made available by the contractor at the time of review:

- CPRs
- Fringe benefit statements that accompany the CPRs
- DAS forms (DAS 140)
- CAC forms (CAC 2)
- Union Trust Fund Reports substantiating fringe benefit payments
- Copies of requests for approved deductions, if any
- Copies of cancelled payroll checks issued during the review period – Front and Back
- Copies of the payroll register for the selected review period
- Timesheets/time cards for employees listed in the CPRs for this project.

Investigative activities are the duties and tasks engaged in to verify the payment of prevailing wage rates upon receipt of a complaint or in conducting an audit of records. Prior to filing a Notice of Withholding of Contract Payments, The Authority must demonstrate that a thorough and objective investigation took place. Consequently, all activities aimed at verifying a complaint or the accuracy of records must be documented and maintained. All correspondence regarding wage withholdings, assessments and forfeitures must be completed via first-class, certified U.S. mail. Moreover, if any pertinent documents are delivered by hand, a signature and/or date stamp from whoever received the documents must be obtained. Conversation logs should be kept

for all in-person or telephone conversations, memorializing topics discussed immediately after the conversation takes place.

The activities and information aimed at verifying a complaint or the accuracy of records must correlate with the type of audit performed. The following is a list of different audits that may be performed to determine compliance with the California Labor Code and California Code of Regulations and the activities and information necessary to successfully perform them. These may be conducted at random or in response to specific issues uncovered from spot auditing, employee interviews, or worker complaints.

- **Audits of the obligations to employ and train apprentices**
  - Inquiry to the Apprentice Program sponsor to establish whether contract award information was received, including an estimate for the journeyperson 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 CAC; and whether persons listed on the certified payroll in that craft or trade as being paid less than the journeyperson rate are apprentices registered with that program and working under apprentice agreements approved by the DAS

- **Audits of the obligation to make apprenticeship training contributions to either a training trust or the CAC**
  - Ask 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

- **Audits of "illegal taking of wages"**
  - Inspection of written authorizations for deductions (listed in California Labor Code §224) in the contractor or subcontractor's files and compare to wage deduction statements furnished to employees (California Labor Code §226), together with an interview of several employees as to any payments not shown on the wage deduction statements

- **Audits of the obligation to keep records of working hours, and pay not less than required by California Code of Regulations §16200(a)(3)(F) for hours worked in excess of 8 hours**
  - The steps for review and audit of weekly CPRs under Title 8 California Code of Regulations §16432

- **Audits of the obligations to pay the prevailing per diem wage**
  - Such steps for review and audit of weekly CPRs which will produce a report covering compliance in the areas of:
    - All elements defined as the "General Prevailing Rate of Per Diem Wages" in California Labor Code §§1773 and 1773.1, 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.

- All elements defined as "Employer Payments" set forth in California Labor Code §1773.1, 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 California Labor Code §1773.2 were to be specified in the call for bids, made available in its principal office and posted.
- Staff should request copies of cancelled checks from the project contractors in order to verify that the workers cashed their payroll checks and the CAC and/or trust fund payments (if applicable) were in fact made/credited against the contractors account.

11.1 HOW TO: Audit Certified Payroll Records

Because audits involve comparing CPRs to records and documents maintained independent of them, it is important to thoroughly audit the CPRs themselves. *See Sections 8.1 through 8.3 to see a detailed process on how to review CPRs.*

11.2 HOW TO: Audit Trust Fund Reports

- Review the Trust Fund reports for the same month as the CPRs

  Example: Trust Fund Report for May 2011 should be reviewed against the May 2011 CPRs for work performed
- Compare the names listed on the May CPRs to those names listed in the contractor's May trust fund report; check to see which week-end dates are included in that report
- Create a simple chart for each worker listed on the CPRs

  Name, Week 1 hours, Week 2 hours, Week 3 hours, Week 4 hours, and Total Hours
- The Total Hours for that particular employee should be equal to, or less than, the hours listed on the trust fund report
- Check the benefit amounts against the prevailing wage determination to make sure they are paying the correct contribution
- *What if...*An employee listed on the CPRs is not listed on the trust fund report

  Draft a potential underpayment letter and Public Works Audit Worksheet for that worker. Include all hours worked during that month and multiply all hours by the correct benefit rates
- *What if...The benefit amounts on the trust fund reports are lower than those published in the prevailing wage determination*

  Draft a potential underpayment letter and Public Works Audit Worksheet for all affected workers. Include all hours worked during that month and multiply all hours by the correct benefit rates
- *What if...Prevailing Wage Determination refers to the DAS for Apprentice Fringe Benefit Contribution amounts*

Call the local apprenticeship committee to verify the contribution amount (Different periods of apprenticeship may have different contribution amount)

11.3 HOW TO: Audit Training Fund Payments

Contractors may pay some or all of the fringe benefits required by the applicable Prevailing Wage Determination (*process for determining the applicable Prevailing Wage Determination is described in Section 8.4*) direct to the employee as part of their basic hourly rate *with the exception of the training fund contributions.* If the contractor is using an apprenticeable trade, the required training fund contributions must be made either to the CAC or a to a DAS-approved apprentice program.

Payments to the CAC: To pay training fund contributions to the CAC, the contractor can use the CAC 2 Form (*Appendix S*) or pay online.

The CAC 2 form must be filled out listing:

- The name and address of the contractor,
- The name and address of the Awarding Agency,
- The contractor's CSLB license number,
- The project name and location,
- The period that the contractor is paying for (contributions are to be made monthly on the 15th of the month after the month of work was performed)
- The County the work is performed in
- The hours, hourly contribution rate, and total amount paid for the contractor's workforce broken down by trade.

The form must be signed and mailed along with a check to the CAC at:

Department of Industrial Relations
California Apprenticeship Council
P.O. Box 511283
Los Angeles, CA 90051-7838

NOTE: this is a new address as of March 17, 2015.

Training Fund contributions can also be paid online at:
https://www.dir.ca.gov/DAS/tf/cac2.asp

To audit a CAC 2 form, the LCO should:

- Review the form to verify the above information is filled in correctly,
- Review the rates listed for each work classification and verify that they are correct
- Verify that the rates multiplied by the hours reported add up to the contribution amount
- Check the hours reported against the hours reported on CPRs for the reporting period and verify that they match up
- Verify that a cancelled check is attached in the amount reported, payable to the CAC.

The contractor's payments to the CAC can also be looked up online here:

http://www.dir.ca.gov/CAC/trainingfund/Tfsearch.html

Payments to other DAS-Approved Apprenticeship Programs: Contractors may also pay their training fund contributions to a DAS-approved apprenticeship program. To make these payments, they may use a form required by the program or one of their own making. The form should include the same information as the CAC 2 form:

- The name and address of the contractor
- The name and address of the program they are submitting payments to
- The project name and location
- The period that the contractor is paying for (contributions are to be made no later than quarterly though most programs also require them to be paid monthly on the 15th of the month after the month of work was performed)
- The County the work is performed in
- The hours, hourly contribution rate, and total amount paid for the contractor's workforce broken down by trade.

To audit such payments, the LCO should follow the same steps as described above for the CAC 2 form, with the addition of verify that the program the payments are being made to is indeed an approved program for the work being performed.

A list of DAS-approved apprenticeship programs by trade can be found at the following link:

http://www.dir.ca.gov/databases/das/pwaddrstart.asp

Union contractors are typically required to pay to their union's apprenticeship program and their payments will usually be included as part of their trust fund reports (*See auditing trust fund reports in Section 11.2 above*)

If an underpayment is discovered, then the CAC or Apprenticeship Program would be owed restitution and an audit should be prepared as described below.

11.4 HOW TO: Prepare an Audit Letter

When it has been determined that a potential violation exists, staff shall take prompt action to enforce compliance, including the thorough imposition of appropriate penalties and formal enforcement action. Every audit where a potential underpayment or violation has been uncovered should be accompanied by an audit cover letter that describes the violation and how to rectify it in addition to an Audit Rationale Sheet, which is a summary of the investigation with a statement of the preliminary findings and recommended corrective action necessary to meet compliance requirements and audit worksheets provided by the DIR, which include: a Public Works Audit Worksheet that shows the workers involved and amounts paid/due; a Public Works Investigation Worksheet; and a Prevailing Wage Determination Summary sheet. Any details about the audit that are not described on the audit letter must be included in the Audit Rationale sheet.

The audit cover letter should include the following information:

- Subject Line: Summarize the issue and assign an audit number to the audit; the audit number should contain the contractor's name and a number to differentiate

it from any other audits. State the project name. Include The Authority as the awarding body.

- Introductory paragraph: State that the project is a public works project that is subject to the payment of prevailing wages. Introduce which staff is responsible for monitoring and enforcing the labor compliance program on the project. State that staff has discovered an apparent violation of the California Labor Code (state the section) and describe what the issue is (e.g. underpayment of prevailing wages, non-payment of training fund contributions, underreporting of workers/hours on Trust Fund Reports, etc). State how many workers are affected and describe the method in which the underpayment was discovered (e.g. completed a review of CPRs, reviewed reports that contain differences in the number of workers reported on the CPRs, on-site interviews, etc.).

- Describe the issue: State the facts. Describe the information behind the discovery of the underpayment issue. Describe how the contractor's reports are potentially incorrect (e.g. do not reflect the correct wages, number of workers, etc.) and what the correct information should be. Cite the DIR determination and make reference to any predetermined increases that are applicable to the project. Summarize how much money is due and state that the amount is reflected in the attached audit worksheet. Restitution checks to resolve worker underpayment issues should be made payable to the worker, minus standard tax deductions. All underpayment checks should be sent to the LCO for distribution to the appropriate employee. This is the typical practice of restitution, however, the contractor has the ability to pay restitution directly to the workers and then provide evidence proving payment to the affected workers. Evidence would include information such as a copy of the canceled check sent to the worker with all of the itemized deductions listed.

- Note the period covered. State "any other audits outside of this period will be assessed in a separate audit."

- Un-verified apprenticeship certifications (if applicable to the audit)
  - These documents are necessary if staff has identified apprentices working on the job but cannot verify that they are registered apprentices.

- Request for missing documents

- Instructions for making restitution and penalty payments

- Due dates for a response
  - Indicate a time period for response, usually 10 days, and request that any refutation of the preliminary findings be accompanied by documented evidence supporting the claim. Identify the consequences for failure to respond, failure to provide additional evidence of compliance, or failure to provide proof of payment.

All underpayment letters pertaining to an audit must be sent via certified mail to both the prime and affected subcontractor, if applicable.

Who Receives Restitution of Fringe Benefits?

- If fringe benefits are paid into a Trust Fund or approved plan, then any restitution of unpaid fringe benefits may be paid to that fund or plan.
- If fringe benefits are paid in cash to the worker, then these are treated as a regular underpayment to the worker.

11.5 HOW TO: Prepare an Audit Worksheet

The purpose of the audit worksheet is to outline the nature of the violation. The contractor will be provided with a copy of the audit worksheet. If the contractor fails to respond, staff forwards the audit worksheet to the Labor Commissioner, at which point it will be the responsibility of the contractor to follow up. Audit worksheets sent to the Labor Commissioner must include:

- A Public Works Audit Worksheet
- A Prevailing Wage Determination Summary
- A Public Works Investigation Worksheet
- A Public Works Audit Worksheet
- An audit narrative (determination) that contains a thorough description of the violation and its discovery, an account of the actions LCO staff took to resolve the issue, and the LCO's recommendation

Calculating Amounts Due to Workers

- To calculate the amounts due to workers, a Public Works Audit Worksheet will be completed. California Code of Regulations §16432(e) requires that audits be detailed in a Public Works Audit Worksheet—Appendix B (s*ee Section 11.9).*
- For contractors who are paying fringe benefits to an approved plan, fund or program, the "Hourly Rate of Pay" on the payroll report form is to be compared with the "Basic Hourly Rate" shown on the wage determination. If the worker's hourly rate equals or exceeds the basic hourly rate, no underpayment of prevailing wages exists.
- **Note:** Vacation pay is always taxable, is included in the hourly rate of pay, and then is deducted.
- For contractors who are paying fringe benefits in cash, the "Hourly Rate of Pay" is to be compared with the "Total Hourly Rate" shown on the wage determination (minus the training fund contribution). If the worker has been paid an amount equal to or greater than the prevailing wage rate, no underpayment exists.
- If a worker has been underpaid, the difference between the minimum applicable hourly prevailing rate and the hourly rate paid is calculated and multiplied by the total hours worked in order to determine the amount of underpayment. Straight-time hours and overtime hours are calculated separately. When calculating overtime underpayments, first multiply the basic hourly rate by 1.5 (or 2.0 if it is for Sunday/holiday work).

Add the fringe benefit amount (employer payments) to that calculation

See Section 11.6 below for how to fill out a Public Works Audit Worksheet and Section 13 on how to notify a contractor of violations.

11.6 Public Works Audit Worksheet

The Public Works Audit Worksheet provides the investigator with a summary of the total wages paid by the contractor versus the required hours/wages that should have been paid. It also identifies penalties and training fund contributions due and owing. *A sample Public Works Audit Worksheet is included below in Section 11.9.*

Below are the headings of a Public Works Audit Worksheet. The headings are followed by a description of the items required.

a. *Employer Firm, Address, Project, Awarding Body (The Authority), Prime, Deputy, Office*
   Include the information in the top portion of the worksheet.

b. *Transcriber*
   Indicate the name of the LCO Auditor here.

c. *Total Amount Due/Owing, Wages Due/Owing, Penalties Due/Owing, Training Funds Due/Owing*
   Enter the total amounts, for all workers, in their respective fields.

d. *Employee*
   List the names of all workers affected by the audit.

e. *Classification*
   Next to each worker's name, list the work classifications. If one worker has performed more than one classification, enter that worker's name next to each classification.

f. *Period Worked*
   Identify each week-ending period worked by each worker listed.

g. *Hours Worked*
   For each day within the reporting week end date, enter the hours the employee worked. Straight-time hours, overtime hours, and double-time hours must be reported on their respective rows.

h. *Other Wages Paid*
   For each week-ending period, enter the total gross wages paid for this project, as reported on the CPRs and on the Public Works Investigation Worksheet.

i. *Total Wages Paid*
   For each week-ending period, enter the total gross wages paid for this project, as reported on the CPRs and on the Public Works Investigation Worksheet.

j. *Prevailing Wage Requirements*
   Other: For each week-ending period, enter any other compensation amounts required, as reported on Public Works Investigation Worksheet.

Total Wages: For each week-ending period, enter the “total wages required” amount, as reported on Public Works Investigation Worksheet.

k. *Amount Owing and Unpaid*
For each week-ending period, enter the “Amount Due and Owing” amount, as reported on Public Works Investigation Worksheet; this is the column next to the “Total Wages Required.”

l. *Penalties No. 1 & Penalties No. 2*
For each week-ending period, enter the penalty amount due for the first penalty assessment (e.g. for penalties associated with California Labor Code §1775 violations); if there are penalties for a second violation (e.g. for penalties associated with California Labor Code §1813 violations) enter those amounts in the Penalties No. 2 area.

m. *Training Fund*
For each week-ending period, enter the total amounts from the ”Total Training Fund” area, as reported on Public Works Investigation Worksheet.

n. *Total Amount Due*
For each week-ending period, enter the ”Amount Due and Owing,” which is the last column on the Public Works Investigation Worksheet.

Enter the total amounts for all columns at the bottom the page. In the box at the lower left-hand side of the page, enter the hourly penalty assessment amount for each violation.

11.7 Prevailing Wage Determination Summary

The Prevailing Wage Determination Summary (see sample below) provides the investigator an overall summary of the prevailing wage rates and contribution amounts associated with the audit. Each work classification is linked to a “code number.” This classification code number must be placed on the Public Works Investigation Worksheet (further explained below).

Below are the headings of a Prevailing Wage Determination Summary. The headings are followed by what items are required. All information can be referenced upon the DIR Prevailing Wage Determination.

a. *Classification*
List all individual work classifications for each scope of work that the contractor employed on the project, which were affected by the audit.

b. *Wage Determination Number*
List the wage determination number for all work classifications that the contractor employed on the project, which were affected by the audit.

c. *Effective Date*
Indicate the effective date of the work classification for each scope of work.

d. Hourly Rate
Indicate the straight-time hourly rate for each work classification.

e. Contributions
Indicate the sum of the hourly Employer Payments, excluding training; these include: health & welfare, pension, vacation, and other.

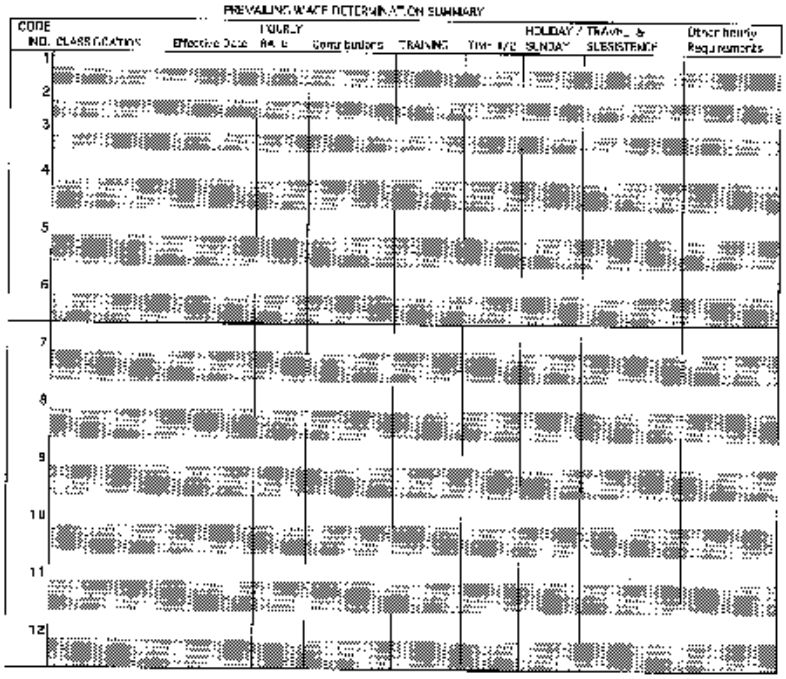
f. Training
Indicate the hourly training contribution amount.

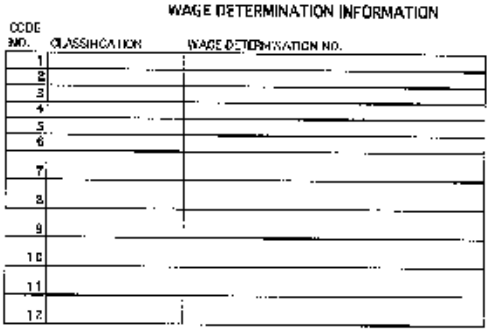
g. Time ½
Indicate the overtime hourly rate for daily time-and-a-half.

h. Holiday/Sunday
Indicate the overtime hourly rate for "Sunday & Holiday" time.

i. Travel & Subsistence
Indicate the travel and subsistence rate. This can be referenced on the internet: www.dir.ca.gov/OPRL/PWD

j. Other Hourly Requirements
Indicate any other hourly requirements that are not covered above. This may include shift differential pay.





11.8 Public Works Investigation Worksheet

The Public Works Investigation Worksheet (see sample below) shall be completed for each worker that is affected by the audit. It provides the investigator with a week-by-week summary of the hours reported as worked/paid versus the required hours/wages that should have been paid, in addition to amounts of penalties. Use as many worksheets as necessary to complete the audit for each worker; denote the total number of pages for that worker in the lower right hand of each page.

Below are the headings of a Public Works Investigation Worksheet. The headings are followed by what items are required.

a. *Employees Name & Social Security Number*
   Identify the name and social security number for the worker.

b. *Deputy*
   Identify the name of the LCO Auditor.

c. *Office*
   Identify the office as "The Watershed Conservation Authority"

d. *Date*
   Identify the date the audit was completed or latest date it was revised.

e. *Employer*
   Identify the name of the contractor that employed the worker.

f. *Case Number*
   Identify the audit case number.

g. *Classification Code*
   The classification code number can be found on the Prevailing Wage Determination Summary.

h. *Period Ending Year wk end*
   Enter the week end date of the CPR in this area.

i. *Hours of Work*
   For each day within the reporting week end date, enter the hours the employee worked. Straight-time hours, overtime hours, and double-time hours must be reported on their respective rows.

j. *Total Days Worked*
   Enter the total days worked within the reporting week.

k. *Total Hours Worked*
   Enter the total hours worked within the reporting week, as reported by the CPR, making sure identify straight-time hours, overtime hours, and double-time hours within their respective rows.

Note: In this area, only enter the hours reported by the contractor. Any mistakes in overtime reported hours should not be corrected here; they should be reflected in the area called "Prevailing Hours Worked."

l. Actual Rate (ST, OT, DT)
Enter the basic hourly rate as reported upon the contractor's CPRs for straight-time hours, overtime hours, and double-time hours.

m. Other Compensation
Enter any other compensation as reported upon the CPRs here.

n. Total Wages Paid
Enter the total gross wages paid for this project, as reported on the CPRs.

o. Required Wage Rates (St, OT, DT)
Enter the basic hourly rate as reported upon the DIR Prevailing Wage Schedule for straight-time hours, overtime hours, and double-time hours.

Note: When determining overtime and double-time hours, Analyst must reference the work classification's Collective Bargaining Agreement (CBA), as published in the prevailing wage determination. The CBA states the hourly threshold for calculating over- and double-time hours.

p. Other Compensation
Enter any other compensation as required by the DIR Prevailing Wage Schedule here. This may include the employer payments/fringe benefit contributions per each hour worked, if the contribution amounts are not calculated as part of the worker's hourly rate (i.e. contributions due to the union trust fund).

q. Total Wages Required
The total wages required is a sum of the "required wage rates" and the "other compensation" column, both multiplied by the hours.

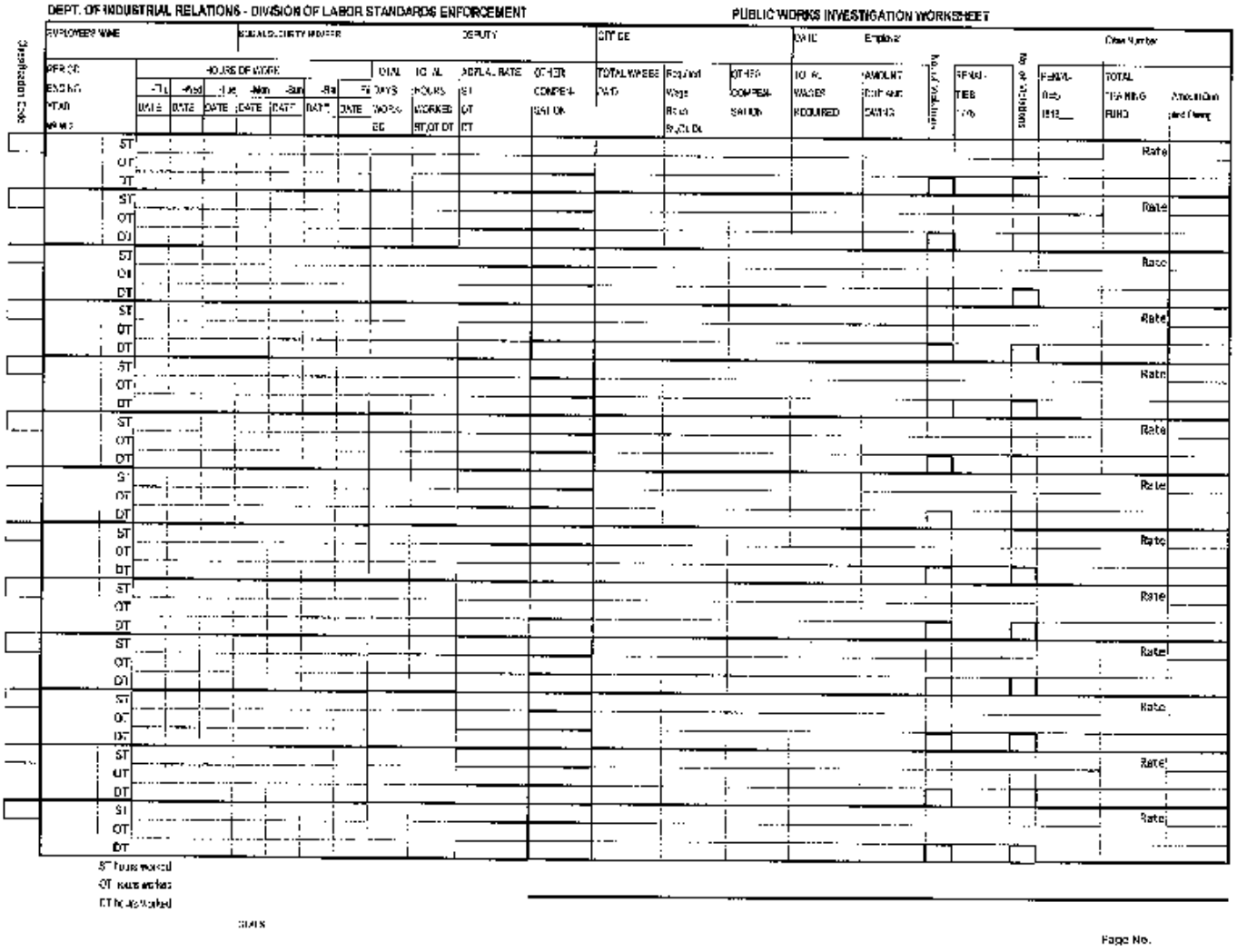
r. Amount Due and Owing
The amount due and owing is the product of the "Total Wages Paid" and "Total Wages Required" fields.

s. No. of Violations
Count and enter the total number of wage violations in the box provided for each reporting week. This amount will be multiplied by the penalty rate.

t. Penalties under California Labor Code §1775 and §1813
In the space (__) provided next to the California Labor Code section number ("1775" or "1813"), enter the assessed penalty amount per occurrence (e.g. $30, $50, $200).

u. Total Training Fund
Enter the hourly training fund contribution amount next to the area called "rate." Multiply that rate by the number of hours worked in that reporting week and enter that amount in the field below the "rate."

v. Amount Due and Owing (column furthest to the right)
The amount due and owing is the product of the “Total Wages Required,” “penalties 1775,” “penalties 1813,” and “Total training fund” fields.



11.9 Public Works Audit Worksheet

The Public Works Audit Worksheet (see sample below) provides the investigator with a summary of the total wages paid by the contractor versus the required hours/wages that should have been paid. It also identifies penalties and training fund contributions due and owing.

Below are the headings of a Public Works Audit Worksheet. The headings are followed by what items are required.

o. Employer Firm, Address, Project, Awarding Body (The Authority), Prime, Deputy, Office
Include the information in the top portion of the worksheet.

p. *Transcriber*
Indicate the name of the LCO Auditor here.

q. *Total Amount Due/Owing, Wages Due/Owing, Penalties Due/Owing, Training Funds Due/Owing*
Enter the total amounts, for all workers, in their respective fields.

r. *Employee*
List the names of all workers affected by the audit.

s. *Classification*
Next to each worker's name, list the work classifications. If one worker has performed more than one classification, enter that worker's name next to each classification.

t. *Period Worked*
Identify each week-ending period worked by each worker listed.

u. *Hours Worked*
For each day within the reporting week end date, enter the hours the employee worked. Straight-time hours, overtime hours, and double-time hours must be reported on their respective rows.

v. *Other Wages Paid*
For each week-ending period, enter the total gross wages paid for this project, as reported on the CPRs and on the Public Works Investigation Worksheet.

w. *Total Wages Paid*
For each week-ending period, enter the total gross wages paid for this project, as reported on the CPRs and on the Public Works Investigation Worksheet.

x. *Prevailing Wage Requirements*
Other: For each week-ending period, enter any other compensation amounts required, as reported on Public Works Investigation Worksheet.

Total Wages: For each week-ending period, enter the "total wages required" amount, as reported on Public Works Investigation Worksheet.

y. *Amount Owing and Unpaid*
For each week-ending period, enter the "Amount Due and Owing" amount, as reported on Public Works Investigation Worksheet; this is the column next to the "Total Wages Required."

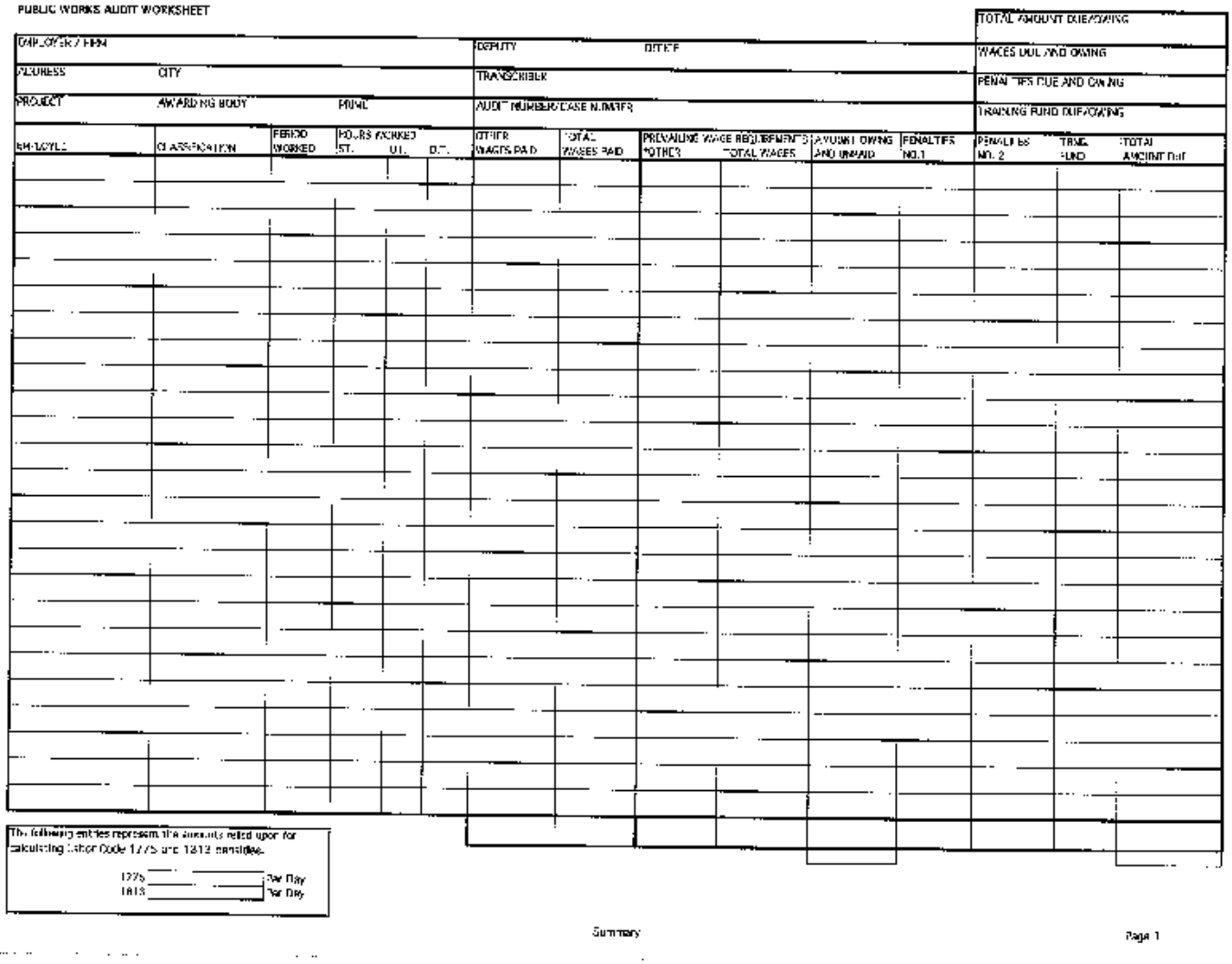
z. *Penalties No. 1 & Penalties No. 2*
For each week-ending period, enter the penalty amount due for the first penalty assessment (e.g. for penalties associated with California Labor Code §1775 violations); if there are penalties for a second violation (e.g. for penalties associated with California Labor Code §1813 violations) enter those amounts in the Penalties No. 2 area.

aa. Trng. Fund

For each week-ending period, enter the total amounts from the ”Total Training Fund” area, as reported on Public Works Investigation Worksheet.

bb. Total Amount Due

For each week-ending period, enter the ”Amount Due and Owing,” which is the last column on the Public Works Investigation Worksheet.


PUBLIC WORKS AUDIT WORKSHEET

																						TOTAL AMOUNT DUE/OWING
EMPLOYER / FIRM								DEPUTY			OFFICE											WAGES DUE AND OWING
ADDRESS		CITY						TRANSCRIBER														PENALTIES DUE AND OWING
PROJECT		AWARDING BODY			PRIME			AUDIT NUMBER/CASE NUMBER														TRAINING FUND DUE/OWING
EMPLOYEE	CLASSIFICATION	PERIOD WORKED	HOURS WORKED ST.	OT.	DT.	OTHER WAGES PAID	TOTAL WAGES PAID	PREVAILING WAGE REQUIREMENTS OTHER	TOTAL WAGES	AMOUNT OWING AND UNPAID	PENALTIES NO. 1	PENALTIES NO. 2	TRNG. FUND	TOTAL AMOUNT DUE								

The following entries represent the amounts relied upon for calculating Labor Code 1775 and 1813 penalties.

1775 _____ Per Day
1813 _____ Per Day

Summary

Page 1

Enter the total amounts for all columns at the bottom the page. In the box in the lower left-hand side of the page, enter the hourly penalty assessment amount for each violation.

12 AUDIT FINDINGS AND RESULTS

12.1 Wage Violations

If a wage violation is identified, an audit letter and DIR Appendix B—Audit Worksheets comprised of the Public Works Investigation Worksheet, Public Works Audit Worksheet and Prevailing Wage Determination Summary (*as detailed in Sections 11.7-11.9 above*)—will detail the violation(s) and the actions to be taken by the contractor to cure the violation(s), including restitution amounts and deadlines. The detailed process below will explain how to investigate and prepare findings for wage violations.

12.2 Preparing a Determination

After the initial audit, all subsequent audits should begin by determining whether additional information, documentation, clarification and wage restitutions from the previous audit have been received.

If two or more audit letters have been sent to a contractor who is in violation, and the contractor has not responded to the audits, nor presented mitigating evidence showing that a violation did not occur, then it is incumbent on staff to prepare a determination for the Labor Commissioner, detailing the nature of the violation and the evidence that was collected by staff.

A determination may be necessary when all attempts at a settlement with the violating contractor have failed, and there are no other recourses for the resolution of the issue. At such a time, the elements identified in the next section, Case Preparation, should be included in the determination, which comprises the work and evidence that staff has done in auditing the violating contractor.

12.3 Case Preparation

In preparing a case for additional review, either by The Authority or by the DLSE, the following critical steps should be routinely applied in every prevailing wage violation case and particularly for those cases that lead to the filing of a Notice of Withholding of Contract Payments. Each individual audit needs a separate Audit file, with copies of all pertinent documents.

- ► Prepare a written audit narrative that reflects the prevailing wage deficiencies and any penalties to be assessed and the key information outlined in the “Audit File System” section 20.2 of this Manual. *A sample template for a written audit narrative is included as Attachment H.*

- ► If an underpayment of wages has been identified:
  - Actions to be taken by The Authority

- Verify that The Authority will withhold enough money to cover the wages and potential penalties if the amount required to cover the wages and potential penalties has not already been withheld.
- Determine the extent of the underpayment
  - How many workers were affected?
  - How much is owed?
  - Prepare the Public Works Audit Worksheet (*see Section 11.6*)
  - Notify the Contractor of the findings with a Wage Underpayment Letter

► Requesting a Review of Forfeitures

- A Request for Approval of Forfeitures can be requested when it has been determined that a contractor has failed to pay prevailing wage. (A Request for Approval of Forfeitures is attached as Appendix I) When a Review for Approval Forfeitures from the Labor Commissioner is requested, a determination must be prepared outlining the steps required by the California Code of Regulations §16437 . The Request for Approval of Forfeitures must be served on the Labor Commissioner and the contractor or subcontractor by certified mail[15] as soon as practicable after the contractor has been notified of the violation and failed to respond, and not less than 30 days before the final payment, but in no event not more 18 months after the file of the Notice of Completion for the project, as outlined in California Labor Code §1741. The following items shall be included in the Request for Approval of Forfeiture submitted to the Labor Commissioner:
  - Was the public work accepted by The Authority?
    - Date of acceptance
  - Was a valid notice of completion filed? If so, date of filing
  - Amount of funds/retention The Authority is holding
  - Any deadlines missed that would impede collection?
  - Provide evidence of violation in narrative form
  - Provide evidence that an audit or investigation occurred.
    - Include a copy of any audit summary stating the amounts of unpaid wages and applicable penalties
  - Provide evidence that the contractor and subcontractor were given the opportunity to explain that there was no violation or that any violation was caused by a good faith mistake and promptly corrected when brought to the attention of the contractor or subcontractor
    - Include evidence that the contractor or subcontractor either did not correct the violation or failed to provide evidence to change the position taken in the determination
  - Where penalties are also included as part of the forfeiture and the contractor or subcontractor has unsuccessfully contended that the

[15] According to the California Code of Regulations §16437, the LCP may exclude from the documents served on the contractor and subcontractor copies of documents secured from the contractor or subcontractor during an audit, investigation, or meeting if those are clearly referenced in the file or report.

violation was a result of a good faith mistake and was promptly corrected, a short statement recommending assessment of the penalty amount pursuant to California Labor Code §1775(a) should be included

- Where only wages are sought or a penalty of less than $200 per day is sought because the contractor or subcontractor has successfully contended the violation was a good faith mistake that was promptly corrected, the file should include evidence as to the contractor or subcontractor's knowledge of the obligation, including the communication to the contractor of the obligation in the bid invitations, at the pre-construction conference agenda and records, and other notice given as part of the process. Include a statement recommending penalties pursuant to California Labor Code §1775(a)
- Detail any previous record of the contractor or subcontractor in meeting their prevailing wage obligations
- State whether the LCP has been granted approval on an interim or temporary basis (California Code of Regulations §16425 or C§16426) or whether extended approval (California Code of Regulations §16427) has been granted

- A copy of the wage Prevailing Wage Determination, found on the DIR Website and detailed in Section 8.4, is required to be served to the contractor or subcontractor
- The Request for Approval of Forfeitures shall also be served by certified mail on any bonding company issuing a bond that secures the payment of the wages covered by the Request for Approval of Forfeitures 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 The Authority 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.
- **Summary:** A request for approval of forfeitures is an assessment where the LCO, acting under the authority granted to it by the state of California, seeks enforcement against a contractor believed to be in violation of payment of prevailing wage rates. Prior to collecting money from the contractor for wages and or penalties, The LCO must request an approval of forfeitures from the DLSE. A detailed narrative must be submitted to the DLSE requesting approval of forfeitures. *A sample Request for Approval of Forfeitures is included as Appendix I.*

► Response from Labor Commissioner

- Once a response is received regarding the disposition of this case, the contractor must be notified of the findings the Labor Commissioner determines, whether that be approval or rejection of the request.

- Additional Actions by Staff[16]
  - See the hearing process in the "Labor Commissioner Assessment and Review of Assessment Process" section below
  - Distribution of checks to the affected workers once monies have been received by The Authority from the contractor

[16] See California Labor Code §§1771.6(c) through 1771.6(e).

13 NOTIFICATION

According to the California Code of Regulations[17], after staff determines violations of prevailing wages have occurred, staff shall notify the contractor and affected subcontractor of the violation so as to resolve the wage deficiency prior to a determination of the amount of forfeiture by the Labor Commissioner. Keeping contractors aware of violations is integral to proceeding with forfeitures and/or withholding procedures.

The audit cover letter is sent to the contractor requesting documents as evidence of payment of prevailing wages. If the contractor in question is not the prime contractor, a separate letter is sent to the prime informing the contractor of the letter sent to the subcontractor. All correspondence regarding audits, withholdings, assessments and forfeitures must be delivered via first-class, certified U.S. mail, to the Prime Contractor and affected subcontractor (if applicable) until the matter is resolved.

The contractor has 10 working days from the date of the letter to respond. Failure to respond will result in a notification issued to the prime contractor or to the Awarding Body, as appropriate, informing them of sanctions to be imposed subject to California Labor Code §1776(g)[18].

If a Notice of Withholding (see Section 16) is being sent, the Surety and/or Bonding company must also be informed via first-class, certified U.S. mail. The contractor and affected subcontractor then have 30 days to submit exculpatory evidence that support the issue as a “good faith mistake.”

If, based upon the contractor's submission, it is concluded that the failure to pay the correct wages was a good faith mistake, and there is no knowledge that the contractor and affected subcontractor have a prior record of failing to meet their prevailing wage obligations, it shall not be required to request of the Labor Commissioner for a determination of the amount of penalties to be assessed under California Labor Code §1775 if the underpayment of wages to workers is promptly corrected and proof of such payment is submitted.

Pursuant to the California Code of Regulations §16432(f), for each instance in which a wage deficiency is resolved in accordance with this regulation, staff shall maintain a written record of the failure of the contractor or subcontractor to meet its prevailing wage obligation. The record shall identify the public works project, the contractor or affected subcontractor involved, and the gross amount of wages paid to workers to resolve the prevailing wage deficiency; and the record shall also include a copy of the Audit prepared pursuant to along with any exculpatory information submitted by the affected contractor.

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[17] See California Code of Regulations 2007 Amendments §16432(f).

[18] See California Labor Code §1776(d).

When a subcontractor commits a violation, the prime contractor must be notified and informed of his rights under California Labor Code §1729.

13.1 Notification to 3rd Party Agencies and Workers Regarding Requests for Documentation

Whenever a complaint is forwarded directly by an employee or other interested party (i.e. Union, 3rd Party Compliance Agency, etc.), that alleges violations of the Labor Code or LCP with respect to the project, an LCP must respond as detailed in California Code of Regulations §16434(b). These steps are contained in section 13 of this manual.

13.2 Public Payroll Records Requests

Members of the public have the right to request copies of contractors' certified payroll records from The Authority. (See California Labor Code §1776(b)(3)) Such requests are commonly received from unions, joint labor-management groups, and independent compliance organizations.

Procedures for Processing Public Requests for Certified Payroll Records

If a written CPR request is made which contains at least the following details: (1) The body awarding the contract; (2) The contract number and/or description; (3) The particular job location if more than one; (4) The name of the contractor; and

1. if the records have been received:
    a. Then, within 10 days of the receipt of the request: the requesting party will be provided an acknowledgment of their request; estimate reproduction cost; and estimate a date and time that the records will be made available and send by Certified Mail.
        i. Upon receipt of reproduction costs from a requesting party who identifies themselves an agent of a joint labor-management committee.
            1. Redact worker's names and social security numbers from CPRs.
            2. Notify the requesting party that the records are available.
        ii. Upon receipt of reproduction costs from a requesting party (who does not identify themselves as a joint labor-management committee)
            1. Redact worker's names, addresses, and social security numbers from CPRs.
            2. Notify the requesting party that the records are available.
2. If the records have not been received:
    a. Then, within 10 days of the receipt of the request: the requesting party will be provided an acknowledgment of their request; send a request for CPRs to the contractor responsible for those records pursuant to California Code of Regulations §16400(d) and provide a copy of the request to the original requesting party
        i. Non-response from a contractor after 10 days is a violation of California Code of Regulations §16400(d)(2)(b) and should follow the delinquent document withholding process found in §7 of this manual.

ii. Upon receipt of records from the contractor: provide the requesting party a notification that the requested documents are available, estimate reproduction cost, and estimate a date and time that the records will be made available. (Pursuant to California Code of Regulations §16402, costs shall be $1 for the first page of the payroll records and 25 cents for each page thereafter, plus $10 to the contractor or subcontractor for handling costs.)
    1. Upon receipt of reproduction costs from a requesting party who identifies themselves an agent of a joint labor-management committee.
        a. Redact worker's names and social security numbers from CPRs.
        b. Notify the requesting party that the records are available.
    2. Upon receipt of reproduction costs from a requesting party (who does not identify themselves as a joint labor-management committee).
        a. Redact worker's names, addresses, and social security numbers from CPRs.

Notify the requesting party that the records are available.

California Labor Code §1776(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 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 awarded the contract or the subcontractor performing the contract shall not be marked or obliterated. Any copy of records made available for inspection by, or furnished to, a joint labor-management committee established pursuant to the federal Labor Management Cooperation Act of 1978 (29 U.S.C. §175(a)) shall be marked or obliterated only to prevent disclosure of an individual's name and social security number. A joint labor management committee may maintain an action in a court of competent jurisdiction against an employer who fails to comply with California Labor Code §1774. The court may award restitution to an employee for unpaid wages and may award the joint labor management committee reasonable attorney's fees and costs incurred in maintaining the action. An action under this subdivision may not be based on the employer's misclassification of the craft of a worker on its certified payroll records. Nothing in this subdivision limits any other available remedies for a violation of this chapter.

California Labor Code §1776(j)
The director shall adopt rules consistent with the California Public Records Act (Chapter 3.5 (commencing with §6250) of Division 7 of Title 1 of the California Government Code) and the Information Practices Act of 1977 (Title 1.8 (commencing with §1798) of Part 4 of Division 3 of the Civil Code) governing the release of these records, including the establishment of reasonable fees to be charged for reproducing copies of records required by this section.

California Government Code §6253(b) [see California Labor Code §1776(i)]
Except with respect to public records exempt from disclosure by express provisions of law, each state or local agency, upon a request for a copy of records that reasonably describes an identifiable record or records, shall make the records promptly available to any person upon payment of fees covering direct costs of duplication, or a statutory fee if applicable. Upon request, an exact copy shall be provided unless impracticable to do so.

14 ISSUES MANAGEMENT

After a potential underpayment or other labor compliance issue is brought to the attention of the contractor, the proper follow-up can be complicated, depending on what sort of issue is found. At times, it may not be known with certainty the identity of workers on the job, or the dates on which they worked. Information might be received from the contractor, workers, or other sources that clarifies or contradicts the initial assessment. This can be an iterative process, in which the audit is revised and refined as further information is received.

As long as the contractor is cooperative and responsive, or new information continues to become available, this process can be valuable and lead to more accurate assessments that will be able to stand when challenged. It is important, however, not to unduly delay the resolution process in the hopes of obtaining the perfect information. Contractors may employ delaying tactics to keep an issue open indefinitely.

15 ISSUE RESOLUTION & RESTITUTION PAYMENTS

15.1 Contractor Submits Restitution Check – Staff forwards Check to Affected Parties

It is preferred that the restitution checks be distributed to the affected workers through the awarding body/approved LCP instead of through the contractor directly. This ensures that the payment was made and no kickbacks or other arrangements were made. In some situations; however, restitution payments are paid directly to the affected workers. If the contractor made restitution payment directly to the worker, the contractor must submit copies of cancelled checks as proof before the issue is closed. The following procedures detail the steps the awarding body/approved LCP should follow in issuing restitution checks to workers:

1. Make a copy of all submitted restitution checks.

2. Verify that the amounts on the check match the underpayment amounts (minus standard tax deductions).

3. **SENDING CHECKS TO WORKERS**: Send a letter to the worker's last known address that summarizes the issue and requests that the worker contact staff to collect their check. Note: the letter should contain a sentence in Spanish asking them to contact staff to collect money due to them.

   When the worker calls, have them verify their social security number. Once verified, the check can either be mailed to them or they can pick it up. If the restitution check is mailed, make a copy of the mailed letter.

   If the check is picked up, the worker must provide a copy of their identification card for proof of pick-up; a copy is made of the identification card for the file.

   What if a worker cannot be located, or a mailed letter is returned as undeliverable, or a worker doesn't contact the office to collect their check? Create a listing of all workers whose checks remain unclaimed. Within 60 days of receipt of the restitution checks from the contractor, send a letter to all workers whose addresses were verified. In the letter, inform the workers that their co-workers' restitution checks have not been claimed and request that they contact staff if they know the contact information (i.e. phone number or new address) for any of the listed co-workers whose checks remain unclaimed. If the checks remain unclaimed after 1 year, the checks shall be sent to the DIR (see address below).

   4. SENDING CHECKS TO CAC:
   - Identify the project, The Authority, and affected contractor
   - State who monitored and enforced the LCP on the project
   - State the period of violation

- Attach a CAC 2; obtain one from the contractor if it was not attached to the restitution payment.
- Mail the letter to: State of California, Department of Industrial Relations, California Apprenticeship Council, P. O. Box 420603, San Francisco, CA 94142
- CC the affected contractor, the prime, and the Agency
- Make copies of all correspondence for the project file.

5. SENDING CHECKS TO TRUST FUNDS:

- Identify the project, The Authority, and affected contractor
- State who monitored and enforced the LCP on the project
- State the period of violation
- Attach a copy of the audit worksheet
- CC the affected contractor, the prime, and the Agency
- Make copies of all correspondence for the project file.

6. SENDING UNCLAIMED RESTITUTION CHECKS TO THE DIR

- Identify the project, The Authority, and affected contractor
- State who monitored and enforced the LCP on the project
- State the violation and why the checks are being sent to the DIR.
- Mail the letter to: Department of Industrial Relations, Attn: Public Works Unpaid Wage Fund, 2031 Howe Avenue, Suite 100, Sacramento, CA 95825
- Make copies of all correspondence for the project file.

15.2 Contractor Submits Mitigating Evidence

Upon receiving notice of an apparent violation, the contractor has 10 working days from the date of the letter to submit mitigating evidence. Mitigating evidence is anything that can substantiate that prevailing wages were paid for all workers and all hours worked on the project. Any mitigating evidence shall be thoroughly reviewed to determine if the compliance issue still persists.

If all issues identified in the audit are rectified upon review of the mitigating evidence, a letter describing the audit, it's resolution, and stating that it has been closed out shall be issued.

If only partial issues are mitigated, the remaining issues will be addressed in a separate audit denoted by placing a letter of the alphabet after the audit number. For example, if the initial audit is called "ABC Contractor Audit #1", once mitigating evidence resolves some but not all issues, the remaining issues will be identified in "ABC Contractor Audit #1a." If more evidence is submitted that solves more but not all issues, the remaining issues will be addressed in "Badcontractor Audit #1b" and so forth.

15.3 Contractor is Non-Responsive

Upon receiving the first notice of an apparent violation, the contractor has 10 working days from the date of the letter to attempt to resolve the issue.

If no response is received within the 10-day period, the contractor shall be notified that an approval of forfeitures will be sought from the Labor Commissioner and will be provided with an audit worksheet delineating the underpayment and penalty amounts (pursuant to California Labor Code §1775(a)). To determine how to assess a penalty, see §16.3 titled "Penalties Imposed by the Labor Commissioner."

If no response is received within the 10-day period, The Authority shall submit a request for Approval of Forfeitures to the Labor Commissioner.

15.4 Issue Follow-Up

After an apparent issue has been identified, and after an audit letter has been sent, staff should note the letter's due date for a response in a Letter Log and in the Analyst's Outlook calendar.

Prior to the due date for the contractor's response, sending a fax notice to the contractor reminding them that a response is due for the audit usually elicits a timely response.

15.5 Issue Closeout

Once an audit is completely resolved through the submittal of mitigating evidence or restitution payments, a letter notifying all parties that the issue is closed out shall be issued. The closeout letter should state the project, affected contractor, and briefly describe the issue and how it was resolved. If restitution checks were submitted to resolve the issue, copies of the checks should be attached to the closeout letter. The issue closeout letter should be sent to the affected contractor, its prime contractor, The Authority, and any 3rd party compliance agencies involved in the audit (e.g. unions, Center for Contract Compliance).

16 ASSESSMENT PROCESS

16.1 Labor Commissioner Assessment and Review of Assessment Process

After receiving a Request for Approval of Forfeiture, the Labor Commissioner shall affirm, reject, or modify the forfeiture in whole or in part as to the wages and penalties due. The assessment is sent to the author of the determination, typically the LCO. The assessment will be sent in writing via first-class and certified mail to the contractor, subcontractor, and The Authority not later than 18 months after the filing of a valid notice of completion in the county recorder's office, or within 18 months following the acceptance of the public work, whichever occurs last. The assessment will contain a description of the nature of the violation; the amount of wages, penalties, and forfeitures due; and the basis of the assessment. If the assessment is served after the 18 month period and if The Authority has not yet made full payment to the contractor, the assessment is valid up to the amount of the funds retained[19].

The affected contractor may obtain review of a civil wage and penalty assessment if the contractor sends a written request to the office of the Labor Commissioner within 60 days. If the contractor does not meet the deadline, the assessment is final[20].

Upon receipt of a contractor's request, a hearing shall be scheduled with the Labor Commissioner within 90 days. **Note: Staff does not have the authority to waive the 90 day hearing request period.**

At the hearing, the contractor shall have the burden of proving that the basis for the civil wage and penalty assessment is incorrect.

Within 45 days of the conclusion of the hearing, the director shall issue a written decision affirming, modifying, or dismissing the assessment. The decision will contain a notice of findings, findings, and an order and will be served on all parties and The Authority sent via first-class mail. Within 15 days of the issuance of the decision, the director may reconsider or modify the decision to correct an error. Clerical errors may be corrected at any time.

Both the Labor Commissioner and The Authority shall afford the contractor or subcontractor a meeting to settle a dispute regarding the notice if the contractor or subcontractor delivers the request within 30 days of the service of the notice. Nothing during the meeting is subject to discovery in any administrative or civil proceeding; only the final agreement may be admissible[21].

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[19] See California Labor Code §1741.

[20] See California Labor Code §1742.

[21] See California Labor Code §1742.1.

During the hearing process, any communication (sent via fax, e-mail, letter, etc.) with the Hearing Officer **must also be transmitted to all affected parties**—the client, the contractor, subcontractor, if any, and their respective attorneys. It is of utmost importance that all parties are appropriately informed to prevent any complications during this important process.

During the hearing process the following sections of the California Code of Regulations (Title 8, Chapter 8, Subchapter 6) are important considerations to take into account:

- California Code of Regulations **§17221 Rule (21) – Opportunity for early settlement; Evidence, hearsay, accusations**

  No evidence of anything said or any admission for the purpose of, or in the course of, or pursuant to, such a settlement meeting shall be admissible or subject to discovery in any administrative or civil proceeding.

- California Code of Regulations **§17234 Rule (34) – Evidence by (worker) Affidavit or Declaration**

  The other party must be notified if we elect to use witness statements when the witness *will not* be testifying or *will not* be available to be cross examined. Rule 34 states that 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 below (in quotes). Unless another Party, within 10 days after service of such notice, delivers to the proponent a request to cross-examine the affiant/declarant, the right to cross examine such affiant/declarant is waived and the affidavit/declaration, if introduced in evidence, shall be given the same effect as if the affiant/declarant has testified in person.

  The "notice" 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 /declarant] will be introduced as evidence at the hearing in [Title and other information identifying the proceeding]. [Name of affiant /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/declarant. Your request must be mailed or delivered to [name of the proponent, Representative, agent, or attorney] on or before [specify date *at least* 10 days after anticipated date of service of this notice on other parties]."

  If a timely request is made to cross-examine an affiant/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 [§17244], which states that 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.

16.2 Civil Proceedings and Request for Review Processes

This section provides additional detail on hearings and civil proceedings. This section will assist staff through the Assessment / Civil Proceeding process, reviewing the process and necessary steps undertaken when an issue is escalated to the level where the DLSE and Office of the Director Legal Unit involvement in the case becomes necessary. Staff should be aware of the timelines, requirements, regulations and nuisances involved in civil proceedings.

16.2.1 Requesting a Review of Forfeitures from the Labor Commissioner

Determinations
When, after an investigation, it is determined that a contractor failed to pay to its workers prevailing wage rates, The Authority can seek a review from the Labor Commissioner that allows The Authority to recoup penalties from the contractor/ subcontractor for violations of California Labor Code relating to the underpayment of wages and for overtime violations. A request for review of forfeitures can be submitted for any contractor determined to be in violation.

An Assessment or a notice assessing penalties under California Labor Code §1776 shall be served on the contractor and subcontractor, if applicable, by first class and certified mail pursuant to the requirements of California Code of Civil Procedure §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 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.

Summary: A request for approval of forfeitures is an assessment where the LCP, acting under the authority granted to it by the state of California, seeks enforcement against a contractor believed to be in Violation of payment of prevailing wage rates. Prior to collecting money from the contractor for wages and or penalties, The LCP must request an approval of forfeitures from the DLSE. A detailed narrative must be submitted to the DLSE requesting approval of forfeitures.

16.2.2 Preparing a Determination/Assessment Narrative

An Assessment shall be in writing and shall include the following information:

- A description of the nature of the violation and basis for the Assessment or Notice in narrative form.

- 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 California Labor Code §1742.1.
- Whether any deadlines have expired that might impede the collection of wages.
- Whether or not a Notice of Completion of Project has been accepted by The Authority and has been filed in the County Recorder's office.
- A brief description of the project, the county in which the work was performed and the scope of work of the contractor.
- A summary of the investigation, including a detailed timeline of events. Describe the evidence in detail and whether or not the contractor made an effort to correct the discrepancy.
- The Findings of the investigation including the violations identified, corrective actions taken by the contractor and any resolutions prior to submittal.
- The Recommendations. A determination of whether or not the violation by the contractor was because of a clerical error or was it a blatant attempt by the contractor at defaulting their workers of wages due. This section will list the penalties that are recommended for the violations committed.

16.2.3 Preparing a Request for Review of Forfeitures

Every Request for Review of Forfeitures should be reviewed by management before continuing on to the next step.

Body Summary
In the main body of the narrative, identify the contractor violations, how you determined their violations and what you did to substantiate your claim. In this section, it is important to reference supporting information relied upon to make your determination (IOR Reports, Daily Reports, Time Sheets, etc.). Be clear on why you did what you did.

Example- In an interview, Joe Smith reported that he and three other workers worked on July 5, 2011. After review of the Ben's Crane Service CPRs, it was discovered that the contractor failed to list any workers on that specific date. In order to substantiate the worker claims, the daily sign in sheets for the project maintained by the Prime Contractor were reviewed. It was discovered that Joe Smith had indeed signed in on the project on the date in question as did three other workers. In addition, this information was further supported by Inspector of Records Reports which showed 4 workers on site for Ben's Crane Service on the date in question. It was therefore determined that the worker statement was valid.

Amount of Wages, Penalties Due
This section substantiates the dollar amounts of the audit, the penalty amounts that are being requested to be approved and any other amounts due by the contractor on the project. (training funds, travel and subsistence, etc.). Describe how each amount was arrived at and why the contractor owes the restitution and to whom they are owed. Penalties are generally assessed on contractors who have a previous history of

noncompliance, and this history should be considered when determining penalty amounts.

Example 1 (Underpayment of Wages) - Based on the statement of the workers, staff determined that they performed Carpentry work on the project exclusively. This information was substantiated by the Site Interview reports in which staff observed the workers doing Carpentry work on the dates in question. The current prevailing wage rate for Carpentry work on this project is $45.75. Mr. Smith reported being paid at a rate of $25 per hour on the project. As a result, the prevailing wage rate was multiplied by the hours worked and determined what the prevailing wage rate total amount due was. From this total, the amounts which were paid to the workers which could be substantiated through paycheck stubs were subtracted.

Example 2 (Penalties)- It was determined that the contractor should have been aware of its obligations on this project to pay prevailing wages given that the contractors contract called out for the payment of prevailing wage rates. In addition, staff is in possession of an executed LCP Checklist in which the contractor signed and agreed to the payment of prevailing wages on the project. It was therefore concluded that this was not a case of oversight or a paper work error on the part of the contractor. As a result, and based on this contractor's history of noncompliance, we are recommending the maximum penalty amount of $200 per day per worker.

Example 3 (Training Funds) - In addition to the wages due, the contractor was required to make training fund contributions to an approved apprenticeship program. Staff audited the contractor and determined that the contractor failed to make training fund contributions to an approved apprenticeship program. As a result, the contractor owes wage restitution to the CAC in the amount of $545.65.

Statute

This is a critical aspect of an assessment. According to California Labor Code §1741 an LCP must request an Approval of Forfeitures not later than 180 days after the filing of a notice of completion or not later than 180 days after acceptance of the public work, whichever occurs last. However, if the assessment is served after the expiration of this 180-day period, but before the expiration of an additional 180 days, and the awarding body has not yet made full payment to the contractor, the assessment is valid up to the amount of the funds retained. If any of these scenarios exist, please list them in the narrative. Any case filed outside of California Labor Code §1741 regulations is considered barred by statute.

This is the trigger that starts the clock running on statute limitations. Once a notice of completion is filed, an LCP is limited to California Labor Code §1741 statute for submitting a request for review.

Description of the work Performed/ Determination
List the County where the project was located in and the type of construction involved. If the contractor is a subcontractor, list the type of work being performed by the subcontractor. In this section, list the wage determination used including the bid date, classification of work and why this determination was applied.

Any wage restitution made by the contractor
If the contractor has made wage restitution, please list. In detail, discuss the contractor's responsiveness to the audit prior to the escalation of the issue into the review process.

Recommendation
The determination should be closed with a recommendation of the approval of forfeitures in the amounts determined to be due. The Deputy Labor Commissioner will either approve or deny the request for review. They can also modify the assessment amount if they are in disagreement with the findings of the investigation.

Statute of Limitations for Submitting a Case for Review
The determination/ assessment shall be served not later than 180 days after the filing of a valid notice of completion in the office of the county recorder in each county in which the public work or some part thereof was performed, or not later than 180 days after acceptance of the public work, whichever occurs last. However, if the assessment is served after the expiration of this 180-day period, but before the expiration of an additional 180 days, and The Authority has not yet made full payment to the contractor, the assessment is valid up to the amount of the funds retained. Service of the assessment shall be completed pursuant to §1013 of the California Code of Civil Procedure by first-class and certified mail to the contractor, subcontractor, and the The Authority's Project Manager. The assessment shall advise the contractor and subcontractor of the procedure for obtaining review of the assessment. The Labor Commissioner shall, to the extent practicable, ascertain the identity of any bonding company issuing a bond that secures the payment of wages covered by the assessment and any surety on a bond, and shall serve a copy of the assessment by certified mail to the bonding company or surety at the same time service is made to the contractor, subcontractor, and the The Authority's Project Manager. However, no bonding company or surety shall be relieved of its responsibilities because it failed to receive notice from the Labor Commissioner.

16.2.4 Approval of Forfeitures

The request for Review 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.

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

A Request for Review shall be deemed filed on the date of receipt 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) [California Code of Regulations §17203(b)] above, or the date of receipt by the designated office of the Enforcing Agency, whichever is earlier.

An additional courtesy copy of the Request for Review may be served on the Department by mailing to the address specified in Rule 23 [California Code of Regulations §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 California Labor Code §1742; however, it may determine the time within which the hearing shall be commenced under Rule 41(a) [California Code of Regulations §17241(a)] below.

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.

Once approval has been received, The Authority shall serve on the contractor and bonding company a copy of the approval of forfeitures and a Notice of Withholding of Progress Payments.

Summary: Explain what you did, why you did it and how you arrived at your findings. Stay away from opinions but make it clear why you arrived at your conclusion and what information you relied upon to get there.

16.2.5 Notice of Withholding of Contract Payments

After an approval of forfeitures has been received the awarding body must issue a notice of withholding of contract payments. The notice advises the contractor that a Request for Review of Forfeitures has been received and approved and that the Labor Commissioner has agreed with the investigation findings.

The Withholding of Contract Payments per California Code of Regulations §16435.5, or a notice assessing penalties under California Labor Code §1776 shall be served on the contractor and subcontractor, if applicable, by first class and certified mail pursuant to the requirements of California Code of Civil Procedure §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 (The Authority) 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.

The Notice of Withholding of Contract Payments shall be in writing and shall include the following information:

- A description of the nature of the violation and basis for the Assessment or Notice in narrative form.
- 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 California Labor Code §1742.1.
- The name and address of the office to whom a Request for Review may be sent.
- Information on the procedures for obtaining review of the Assessment or Withholding of Contract Payments;
- Notice of the Opportunity to Request a Settlement Meeting under Rule 21 [California Code of Regulations §17221] below; and the following statement which shall appear in bold or another type face that makes it stand out from the other text.

Labor Compliance Program _____ _____ _____ _____ Phone: Fax:	(SEAL)
Date:	In Reply Refer to Case No.:

Notice of Withholding of Contract Payments

Awarding Body	3 Work Performed in County of
Project Name	3 Project No.
Prime Contractor	
Subcontractor	

After an investigation concerning the payment of wages to workers employed in the execution of the contract for the above-named public works project, the Labor Compliance Program for _____ _____ (Awarding Body) has determined that violations of the California Labor Code have been committed by the contractor and/or subcontractor identified above. In accordance with Labor Code sections 1771.5 and 1771.6, the Labor Compliance Program hereby issues this Notice of Withholding of Contract Payments.

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

_____
_____
_____
_____

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: $_____

By:_____

An affected contractor or subcontractor may obtain review of a civil wage and penalty assessment under this chapter by transmitting a written request to the office of the Labor Commissioner that appears on the assessment within 60 days after service of the assessment. If no hearing is requested within 60 days after service of the assessment, the assessment shall become final.

In summary, it is important to serve the notice of withholding of contract payments on all parties via Certified Mail. In addition, complete the attached Proof of Service form and certify sending it to all of the parties. Proof of service is critical to the case.

LABOR COMPLIANCE PROGRAM _____ Review Office - Notice of Withholding of Contract Payments _____ _____ _____ Phone: Fax:	(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. These hearings are **not** governed by Chapter 5 of the Government Code, commencing with section 11500.

16.2.6 Hearings/Civil Proceedings

Review the chart below for an overview and general timeline of the steps included in the hearings process.

Step Number	Step in the Hearing Process	Timeline	Additional Comments
1.	Pre-Hearing Activities	Within the 4 weeks before the hearing	Pre-hearing activities include activities 2 through 5.
2.	Review of Evidence to be used at a Hearing	As soon as possible, review should begin at the onset of the hearing process	This is a review of all evidence to ensure that staff and counsel have covered all information.
3.	Re-interviewing of witnesses	Between 1-2 weeks before the hearing	Witnesses can change stories or retract statements, so a re-interview is an important step.
4.	Pre-Hearing Conferences/ Motions	A first pre-hearing conference is conducted by phone, usually after a request for a hearing. Must be completed within 90 days of that request.	The Hearing Officer will inquire if parties have reached agreement, and otherwise sets a hearing date and will go through stipulations.
5.	Pre-Hearing Orders	Parties must exchange exhibits 3 weeks prior to hearing, and 2 weeks prior exchange witness lists, and 1 week prior, complete a joint statement.	Hearing Officer will send out the pre-hearing order for parties to exchange exhibits, witness list, and a joint statement.
6.	Waivers	If Parties waive 90-day right to a hearing, then all parties have to be in agreement.	Generally, do not agree to waive time limits.
7.	Communication with The Authority's Management and determination whether County Counsel involvement needed.	Once a case is referred to the OD Legal Unit, inform The Authority's management in order to determine whether it needs legal assistance from County Counsel.	
8.	Taking the Stand	Staff or third party administrator hired by County will be expected to take the stand at a hearing.	

Step Number	Step in the Hearing Process	Timeline	Additional Comments
9.	Settlement Meetings	There is a right to a settlement meeting at any time in the process.	A second hearing officer (one not hearing the case) could come in to help parties reach agreement.
10.	Modifying an Assessment	Could happen at any point when evidence is discovered. Once DLSE has approved a determination, it can be modified based on new evidence.	California Code of Regulations §17226 allows you to modify an assessment if there is newly discovered evidence.
11.	Early Settlement	Could happen at any time prior to the hearing.	Penalties are generally waived when parties reach an early settlement.
12.	Hearing Outcomes/Final Order	Once settlement is reached, the party who requested the hearing needs to request it to be taken off calendar. It is up to the Hearing Officer to make the Final Order: amend, modify, accept or reject. Normally the Hearing Officer will retain jurisdiction for 60 days.	
13.	Rule 26 Letter	Complete the Rule 26 Letter immediately following the Final Order.	A letter is sent to Hearing Officer, citing California Code of Regulations §17226, to notify them that all withholds have been released.

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

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

To: Prime Contractor

_____

_____

_____

Subcontractor

_____

_____

_____

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

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

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

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

(b) An Enforcing Agency shall be deemed to have provided the opportunity to review evidence required by this Rule if it (1) gives the affected contractor or subcontractor the

option at said party's own expense to either (i) obtain copies of all such evidence through a commercial copying service or (ii) inspect and copy such evidence at the office of the Enforcing Agency during normal business hours; or if (2) the Enforcing Agency at its own expense forwards copies of all such evidence to the affected contractor or subcontractor.

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

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

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

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

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

_____

_____

_____

_____

_____

Attention:_____

Request to Review Evidence

To: _____

_____

_____

_____

From:_____

_____

_____

_____

Regarding Notice of Withholding of Contract Payments Dated _____

Our Case No.: _____

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

_____

Phone No.:_____

Fax No.:_____

Pre-Hearing Activities

In the event that the contractor requests a hearing, staff must make available all information that was used to arrive at the assessment. Staff also needs to prepare the presentation of the case and make sure that all proper procedural steps were followed.

Upon receipt of a timely request, a hearing shall be commenced within 90 days before the director, who shall appoint an impartial hearing officer possessing the qualifications of an administrative law judge pursuant to subdivision (b) of §11502 of the California Government Code. The request can be made through The Authority or through the Office of the Director Legal Unit. A hearing officer shall be an employee of the department, but shall not be an employee of the DLSE. Attached is a sample of a request for review of forfeitures. The following supporting documentation should also be included:

Contact Information of all interested Parties and the point of contact for each entity.

Review of Evidence to be used at a Hearing

The contractor or subcontractor shall be provided an opportunity to review evidence to be utilized by the Labor Commissioner at the hearing within 20 days of the receipt of the written request for a hearing. Any evidence obtained by the Labor Commissioner subsequent to the 20-day cutoff shall be promptly disclosed to the contractor or subcontractor. Even if the contractor did not ask to review evidence, it should be implied and therefore sent to the contractor within 20 days.

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

Re-interviewing of witnesses

An important step prior to the hearing is to re-interview the witnesses you plan to call at a hearing, especially the workers. In particular, look for variances in their statements. You will want to ask them questions like who they worked with, what type of work they did, etc. As is to be expected, there will be variances in the stories between workers. It is better to get those discrepancies addressed earlier in the process and prior to the hearing. Since these workers are expected to take the stand, they should be prepared as such. It is also highly recommended that you record worker interviews and should get the permission of the workers prior to doing so. Always have a witness with you in the room and have them identify themselves in the recording. Never interview workers at the same time or allow the workers the opportunity to discuss their version of the events, either during, prior, or after the worker interview.

Pre-Hearing Conferences/ Motions

After a hearing officer has been assigned, the hearing officer will send notice to all the parties informing them of the pre-hearing requirements and will schedule a pre-hearing conference to see where all parties stand in the resolution of their issues. The hearing officer will also seek that all parties agree to the pre-hearing stipulations.

Stipulations

1. Do all parties agree that the subject project is a public works project?

2. Do all parties agree that the Notice of Withholding was served in a timely manner?
3. Has the enforcement agency made available all documents that will be used at a hearing?
4. Has any wage restitution taken place?

There is not an obligation to respond to any of the pre-hearing stipulations at this time and all parties can put those off until the hearing. As a general rule, we stipulate to all but Question 4 which is usually a no.

Pre-Hearing Orders
The Hearing Officer will request that all parties exchange the following Pre-Hearing documents.

1. Witness List
At least three weeks prior to the hearing, the parties are to exchange a list of witness they anticipate to call at the hearing. This would include workers, inspectors, workers from other contractors and representatives of The Authority. Serve on all contractors in accordance with §1013 of the California Code of Civil Procedure.

2. Exhibit List
At least two weeks prior to the hearing, the parties are to exchange a list of exhibits they anticipate to use at a hearing. This would include timesheets, inspector reports, CPRs, sign in sheet, check stubs etc. Serve on all contractors in accordance with §1013 of the California Code of Civil Procedure.

3. Joint Statement
At least one week prior to the hearing, the parties should finalize a joint statement that outlines the key issues each party has with regards to the notice. An LCP is required to list its findings from the assessment/determination. Serve on all contractors in accordance with §1013 of the California Code of Civil Procedure.

Waivers
In order for a waiver of 90 days, all parties need to be in agreement. Granting a waiver means the case can drag on for a long period of time. In the interest of all parties involved, staff cannot grant a waiver.

Testimony
Staff, or a third party administrator hired by The Authority, may be required to testify at a hearing. The analyst who conducted the investigation should be prepared to explain their actions in the investigation and auditing process and will be walked through the testimony by legal counsel. Staff should provide accurate and concise answers. Consult with The Authority's management prior to any testimony by The Authority's staff or a third party administrator in order to determine whether legal assistance is needed and/or a consultation with County Counsel is appropriate.

Settlement Meetings
Prior to a Hearing, a contractor or subcontractor may request a settlement meeting pursuant to California Labor Code §1742.1(c) and may request review of a LCP enforcement action in accordance with California Labor Code §1771.6(b) and §1742

and the regulations found at California Code of Regulations §§17201-17270. The LCP shall have the rights and responsibilities of the Enforcing Agency (as defined in California Code of Regulations §17202(f)), in responding to such a request for review, including but not limited to the obligations to serve notices, transmit the Request for Review to the hearing office, and provide an opportunity to review evidence in a timely manner, to participate through counsel in all hearing proceedings, and to meet the burden of establishing prima facie support for the Notice of Withholding of Contract Payments.

If a contractor or subcontractor seeks review of a LCP enforcement action, the Labor Commissioner may intervene to represent The Authority or to enforce relevant provisions of the California Labor Code consistent with the practice of the Labor Commissioner, or both.

Modifying an Assessment

§17226 of the California Code of Regulations allows The Authority the right to make a motion to modify or amend its Notice of Withhold in the event that new evidence (newly discovered) leads the LCP to conclude that a change to the withholding amount is merited. An example would be a new worker coming forward or perhaps additional paycheck stubs were made available which show the affected workers were paid some of the wages that were identified as owed in the audit. The hearing officer has the right to either accept or deny such a motion. Valid cause is mandatory.

Early Settlement

In the event that a settlement is reached, if requested, an agreement will be prepared and executed where all parties agree in principal to the terms of the agreement. At this time, wage restitution will be collected in the settlement amounts for the workers and collect releases from the workers. It is recommended that a letter be sent to the Hearing Officer requesting that the Hearing Officer retain jurisdiction for an additional 60 days while the obligations of the settlement agreement are met.

Hearing Outcomes/Final Order

Within 45 days of the conclusion of the hearing, the director shall issue a written decision affirming, modifying, or dismissing the assessment. The decision of the director shall consist of a notice of findings, findings, and an order. This decision shall be served on all parties and The Authority pursuant to §1013 of the California Code of Civil Procedure by first-class mail at the last known address of the party on file with the Labor Commissioner. 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.

Rule 26 Letter

Once a case has been resolved and DIR involvement is no longer required, a Rule 26 motion should be filed with the hearing officer (California Code of Regulations §17226) declaring that the claim for wages, damages or penalties has been satisfied, requesting that the hearing be taken off the Calendar, and requesting rescission of the Notice of Withholding. The Authority must also be notified of the completion of the case.

16.3 Penalties Imposed by the Labor Commissioner

Any contractor found to have paid less than the prevailing wage will be assessed a penalty of not more than $200 for each calendar day, or portion thereof, for each worker paid less than the prevailing wage. The Labor Commissioner decides the amount of the penalty, unless it is determined that the contractor's failure of compliance was a good faith mistake and the contractor has no known prior record of non-compliance. This penalty is in addition to restitution amounts[22]. If the affected worker was employed by a subcontractor, the prime contractor is not liable for any penalties unless the prime contractor had knowledge of the subcontractor's failure or the prime contractor failed to comply with the following requirements:

1. The contract executed between the contractor and the subcontractor shall include a copy of the provisions of California Labor Code §§1771, 1775, 1776, 177.5, 1813, and 1815.

2. The contractor shall periodically review subcontractors' CPRs to monitor payment of prevailing wages.

3. The contractor shall diligently take corrective action to halt or rectify subcontractors' failure to comply with prevailing wage law (e.g. retaining sufficient funds due the subcontractor for work performed on the public works project).

4. The contractor shall obtain an affidavit signed under penalty of perjury from each subcontractor stating that the subcontractor has paid the specified general prevailing rate of per diem wages.

The contractor is given 10 days from receipt of written notice to comply with a request for payroll records. Failure to comply will result in a penalty of $100 for each calendar day for each worker until strict compliance is achieved[23].

In the case of prevailing wage non-compliance with California Labor Code §1810, the contractor will be penalized $25 per calendar day[24] for each worker who is required or permitted to work more than eight hours per day or more than 40 hours in any one calendar week. Overtime work is permitted without penalty provided that the contractor pays employees 1.5 times the basic rate of pay. It should be noted that published prevailing wage rates show premium rates for Saturday, Sunday and holiday work; however, these are not considered overtime rates. Failure to pay these premium rates is a prevailing wage violation under California Labor Code §1774 and not an overtime violation.

Under an LCP, monies that are retained are not automatically returned to the contractor. Any money withheld is considered a forfeiture and can be retained by The Authority.

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[22] See California Labor Code §1775(a)(1).

[23] See California Labor Code §1776(h).

[24] See California Labor Code §1813.

The amount retained should be equal to all amounts required to satisfy any civil wage and penalty assessment and should be retained until receipt of a final order that it is no longer subject to judicial review. This amount should be withheld before making payments to the contractor for work completed. If the amount is less than the amount needed to satisfy a civil wage and penalty assessment, the contractor must withhold sufficient money due to the subcontractor(s)[25]. Also, contractors may withhold or reclaim sufficient funds, from the subcontractor(s), to fulfill civil wage and penalty assessments against the subcontractor(s).

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

A contractor or subcontractor as well as all entities in which the contractor or subcontractor has any interest that is found to be in willful violation of labor compliance is ineligible to bid on a public works project, be awarded a contract for a public works project or perform work as a subcontractor on a public works project. The amount of time this penalty is in effect depends on the number of violations within a three year period[26].

The contractor or subcontractor may be guilty of a misdemeanor if, having the ability to pay, he/she willfully refuses to pay wages due and payable after demand has been made and/or falsely denies the amount or validity thereof, or that the same is due, with intent to secure any discount upon such indebtedness or with intent to annoy, harass, oppress, hinder, delay, or defraud the person to whom such indebtedness is due[27].

The contractor or subcontractor may be guilty of a misdemeanor if he or she required the execution of any release of any claim or right on account of wages due, or to become due, or made as an advance on wages to be earned, unless payment of such wages has been made. Any release required or executed in violation of provisions of this section shall be null and void[28].

After 60 days following the service of a civil wage and penalty assessment or a notice of withholding, the affected contractor, subcontractor, and surety on a bond or bonds issued to secure the payment of wages shall be liable for liquidated damages in an amount equal to the wages, or portion thereof, that remains unpaid. Any liquidated damages collected shall be distributed to the employee along with unpaid wages. The administrative law judge may waive the payment of liquidated damages (California Labor Code §1742).

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[25] See California Labor Code §§1727(a) & (b).

[26] See California Labor Code §1777.1.

[27] See California Labor Code §216.

[28] See California Labor Code §206.5.

16.4 Payments to be Withheld or Forfeitures to be Imposed by The Authority

Upon notification by staff of a breach of the labor compliance requirements, The Authority may impose forfeitures.

The forfeiture includes the amount of the underpayment and any applicable penalties assessed under California Labor Code §§1775, 1776 and 1813[29]. If the total forfeitures is less than $1,000.00, the forfeitures shall be deemed approved by the Labor Commissioner if the following is received (California Code of Regulations §16436(b)):

1. The Notice of Withholding of Contract Payments authorized by California Labor Code §1771.6(a)

2. An audit as defined in the California Code of Regulations §16432(e)

3. A brief narrative that includes:
    a. The Bid Advertisement Date

    b. A summary of the nature of the violation

    c. An explanation of the basis of the underpayment

    d. A listing of factors considered in determining the assessment of penalties, if any, under California Labor Code §1775

16.5 Forfeitures Requiring Approval by the Labor Commissioner

For all forfeitures over $1,000.00, approval by the Labor Commissioner shall be requested and obtained in accordance with California Code of Regulations §16436 (also outlined in §16.6 below).

Staff is not required to request a determination of the amount of the penalties to be assessed under California Labor Code §1775 if:

1. Staff concludes that the failure to pay the correct wages was a good faith mistake;

2. Staff has no knowledge that the contractor and affected subcontractor have a prior record of failing to meet their prevailing wage obligations; and

3. The underpayment of wages to workers is promptly corrected and proof is provided to staff.

[29] See California Code of Regulations 2006 and 2007 Amendments §16436(a) and §16436(b).

16.6 Determining Amount of Forfeiture by the Labor Commissioner

In accordance with California Code of Regulations §16437, where a determination of the amount of forfeiture is requested, the request shall include a file or report to the Labor Commissioner which contains at least the information specified in subparts (1) through (9) below. A "Request for Approval of Forfeiture" form is included as an attachment to this Manual.

1. Whether the public work has been accepted by The Authority and whether a valid notice of completion has been filed, the dates if any when those events occurred, and the amount of funds being held in retention by the Awarding Body;

2. Any other deadline which if missed would impede collection;

3. Evidence of violation, in narrative form;

4. Evidence of violation obtained under California Code of Regulations §16432 and a copy of the Audit prepared in accordance with California Code of Regulations §16432(e) setting forth the amounts of unpaid wages and applicable penalties;

5. Evidence that before the forfeiture was sent to the Labor Commissioner: (a) the contractor and subcontractor were given the opportunity to explain why there was no violation, or that any violation was caused by good faith mistake and promptly corrected when brought to the contractor or subcontractor's attention, and (b) the contractor and subcontractor either did not or failed to convince staff of its position;

6. Where not only wages but also a penalty is sought as part of the forfeiture, and the contractor or subcontractor has unsuccessfully contended that the cause of violation was a good faith mistake that was promptly corrected when brought to the contractor or subcontractor's attention, a short statement should accompany the proposal for a forfeiture, with a recommended penalty amount pursuant to California Labor Code §1775(a);

7. Where only wages or a penalty less than $50 per day as part of the forfeiture is sought because the contractor or subcontractor has successfully contended that the cause of the violation was a good faith mistake that was promptly corrected when brought to the contractor's attention, the file should include the evidence as to the contractor's knowledge of his or her obligation, including the program's communication to the contractor of the obligation in the bid invitations, at the pre-construction meeting agenda and records, and any other notice given as part of the contracting process. With the file should be a statement, similar to that described in (6), and recommended penalty amounts, pursuant to California Labor Code §1775(a);

8. The previous record of the contractor in meeting their prevailing wage obligations; and

9. Whether extended approval has been granted under California Code of Regulations §16427.

The file or report shall be served on the Labor Commissioner as soon as practicable after the violation has been discovered, and not less than 30 days before the final payment, but in no event not less than 30 days before the expiration of the limitations period set forth in California Labor Code §1741.

A copy of the recommended forfeiture and the file or report shall be served on the contractor at the same time as it is sent to the Labor Commissioner. The documents served on the contractor may exclude copies of documents secured from the contractor during an audit, investigation, or meeting if those are clearly referenced in the file or report.

The Labor Commissioner shall affirm, reject, or modify the forfeiture in whole or in part as to the wages and penalties due. Per California Code of Regulations §16437(e), the Labor Commissioner's determination of the forfeiture is effective on one of the two following dates: (1) For all programs other than those having extended authority under California Code of Regulations §16427, on the date the Labor Commissioner serves by first class mail, on The Authority's PM, on the contractor and on the subcontractor, if any, an endorsed copy of the proposed forfeiture, or a newly drafted forfeiture statement which sets out the amount of forfeiture approved. Service on the contractor or subcontractor is effective if made on the last address supplied by the contractor or subcontractor in the record. The Labor Commissioner's approval, modification or disapproval of the proposed forfeiture shall be served within 30 days of receipt of the proposed forfeiture.

For programs with extended authority under California Code of Regulations §16427 above, approval is effective 20 days after the requested forfeitures are served upon the Labor Commissioner, unless the Labor Commissioner serves a notice upon the parties, within that time period, that this forfeiture request is subject to further review. For such programs, a notice that approval will follow such a procedure will be included in the transmittal of the forfeiture request to the contractor. If the Labor Commissioner notifies the parties of a decision to undertake further review, the Labor Commissioner's final approval, modification or disapproval of the proposed forfeiture shall be served within 30 days of the date of notice of further review.

16.7 Conditions in which The Authority Shall Withhold Payments

The Authority shall withhold contract payments in the following instances:

1. When payroll records are delinquent or inadequate, the withholding of contract payments is required by California Labor Code §1771.5(b)(5) [30].
    a. It does not require the prior approval of the Labor Commissioner;
    b. The Authority shall only withhold those payments due or estimated to be due to the contractor or subcontractor whose payroll records are delinquent or inadequate, plus any additional amount that staff has

[30] See California Code of Regulations §16435(e).

reasonable cause to believe may be needed to cover a back wage and penalty assessment against the contractor or subcontractor whose payroll records are delinquent or inadequate;

c. Provided that, in most cases, a contractor shall be required in turn to cease all payments to a subcontractor whose payroll records are delinquent or inadequate until staff provides notice that the subcontractor has cured the delinquency or deficiency.

d. Penalties shall be assessed under California Labor Code §1776(h) for failure to timely comply with a written request for certified payroll records. The assessment of penalties under California Labor Code §1776(h) does require the prior approval of the Labor Commissioner under California Code of Regulations §16436. If a subcontractor fails to comply with prevailing wage law, the prime contractor is not subject to a penalty assessment.

2. When, after investigation, it is established that underpayment or other violations have occurred, withholdings require the prior approval of the Labor Commissioner under California Code of Regulations §16436 and §16437.

3. To cure labor compliance violations (see California Code of Regulations §16435).

4. For non-payment of the prevailing wage rate or other employer payments[31].

5. For failure to maintain payroll records in accordance with California Labor Code §1776.

6. For paying apprentice wages to a worker who is not a registered apprentice.

Except as otherwise provided by agreement, only contracts under a single master contract, including a Design-Build contract, or contracts entered into as stages of a single project, may be the subject of withholding[32].

A decision to withhold is typically followed by a contractor's rebuttal. If the contractor is unable to provide the necessary information or if the contractor does not provide the necessary information by the predetermined due date, then the payment is withheld[33].

NOTE: The Labor Commissioner may intervene to represent The Authority [34].

The Authority should hold disbursements until the final order or the expiration of the time period for seeking review of the notice of withholding. Wage claims shall be satisfied prior to the amount being applied to penalties. If insufficient money is recovered to pay each worker in full, the available funds shall be prorated among all

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[31] See California Labor Code §§1771 and 1773.1.

[32] See California Code of Regulations §16435(b).

[33] See California Labor Code §1742(a) & (b) for timeframes.

[34] See California Labor Code §1771.6(b).

workers. Wages for workers who cannot be located shall be placed in the Industrial Relations Unpaid Wage Fund. Penalties shall be paid into the General Fund of The Authority.

16.8 Referring Violating Contractors to the Underground Economy Task Force

Any non-compliance or repeat violator cases for which staff might want to get the Underground Economy Task Force involved should be directed to:

Labor Enforcement Task Force
11623 Glenoaks Blvd.
Pacoima, CA 91331
Phone: (855) 297-5322
left@dir.ca.gov

Furthermore, to view the DLSE's listing of debarred contractors, refer to the following website: http://www.dir.ca.gov/DLSE/debar.html

Violations may also be directed to the CLSB:

Contractors State License Board
San Bernardino District Office
1845 Business Center Drive, Suite 206
San Bernardino, CA 92408
swiftsouth@cslb.ca.gov

16.9 Deposits of Penalties and Forfeitures Withheld

Where the involvement of the Labor Commissioner had 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, penalties and forfeitures shall be deposited with The Authority.

Where collection of fines, penalties or forfeitures results from administrative proceedings or court action to which the Labor Commissioner and The Authority are both parties, the fines, penalties or forfeitures shall be divided between the general funds of the state and The Authority, as the Hearing Officer or court may decide.

All penalties recovered in administrative proceedings or court action brought by or against the Labor Commissioner and to which The Authority is not a party, shall be deposited in the general fund of the state.

All wages and benefits which belong to an employee and are withheld or collected from a contractor or subcontractor, either by withholding or as a result of administrative proceedings or any court action, and which have not been paid to the employee or irrevocably committed on the employee's behalf to a benefit fund, shall be deposited

with the Labor Commissioner, who shall handle such wages and benefits in accordance with California Labor Code §96.7.

17 SETTLEMENT AUTHORITY

Pursuant to California Code of Regulations 16432(f), after The Authority has determined that violations of prevailing wage laws have resulted in wage underpayments and an audit has been prepared, notification shall be provided to the contractor and affected subcontractor of an opportunity to resolve the wage deficiency prior to a determination of the amount of forfeiture by the Labor Commissioner. The contractor and subcontractor shall have at least 10 days following notification to submit exculpatory information consistent with the “good faith mistake” factors set forth in California Labor Code §1775(a)(2)(A)(i) and (ii). If The Authority determines that failure to pay prevailing wages was a good faith mistake, The Authority shall not be required to submit a request to the Labor Commissioner for a determination of the amount of penalties to be assessed under California Labor Code §1775 if the underpayment of wages to workers is promptly corrected and proof of such payment is provided to The Authority.

If a Notice of Withholding of Contractor Payments has already been submitted to and approved by the Labor Commissioner, a contractor or subcontractor may request a settlement meeting with The Authority pursuant to California Labor Code §1742.1(b) and California Code of Regulations §16439(a). California Code of Regulations §16439(c) grants The Authority authority to prosecute, settle or seek the dismissal of any Notice of Withholding of Contract Payments issued pursuant to Labor Code §1771.6 and any review proceeding under California Labor Code §1742, without any further need for approval by the Labor Commissioner, except in cases where the Labor Commissioner has intervened pursuant to subpart (b).

If The Authority settles in whole or in part or seeks and obtains the dismissal of a Notice of Withholding of Contract Payments or a review proceeding under California Labor Code §1742, The Authority shall document the reasons for the settlement or request for dismissal and shall make the documentation available to the Labor Commissioner upon request.

The final settlement agreement should include the following:

- An Admission of Violation by the contractor or subcontractor
- A statement that the "Notice of Withholding" is "satisfied," and not "released"
- Language preventing the agreement from being confidential, allowing the agreement to be introduced as evidence of prior violation at a subsequent Request for Review Hearing.

18 PROJECT CLOSEOUT

It is the responsibility of The Authority to enforce prevailing wage requirements throughout the project, including taking reasonable, vigorous and prompt action to determine whether violations exist and to enforce compliance pursuant to California Code of Regulations §16421. This will help to ensure that project closeout will be efficient and issue-free due to continual compliance monitoring. The project tracking log shall be reviewed to ensure that all documents have been received; including “Final” certified payroll records, proof of trust fund and/or training payments and affidavits.

18.1 Final Documents

Any activities that can be completed prior to closeout should be performed to the extent possible. For example, each subcontractor must submit a payroll clearly marked “FINAL” when all subcontractor work has been completed and no further work hours are to be fulfilled. Although the project may not be closed out until all work has been completed, the subcontractor may be effectively closed out once all necessary documentation is received.

18.2 Request for Authorization to Release Final Payment

The prime contractor is responsible for the compliance status of all subcontractors on the project. Any non-compliance will be subject to a request for approval of forfeitures from the Labor Commissioner.

After receiving all required final documents, a final closeout and review of the subcontractor's file will be conducted. SB 96 requires that the Authority withhold final payment at least 30 days after all required information is submitted. If the 30 day period has passed and there are no outstanding compliance issues, the request for releasing final retention payment is sent to the The Authority’s PM, the Construction Manager, and copied to the prime contractor.

In addition to the final labor compliance documents, release of retention is contingent upon the completion of all contract work. Retention will be release in accordance with the provisions set forth in the Public Contract Code.

19 REPORTING AND MONITORING ACTIVITIES

19.1 Labor Compliance Review & Enforcement Reports

In accordance with California Code of Regulations §16434(d), for each public work project subject to enforcement of prevailing wage requirements, a separate, written summary of labor compliance activities and relevant facts pertaining to that particular project shall be maintained. That summary shall demonstrate that reasonable and sufficient efforts have been made to enforce prevailing wage requirements consistent with the practice of the Labor Commissioner.

The DIR suggested format for tracking and monitoring enforcement activities for each project is entitled “Single Project Labor Compliance Review and Enforcement Report Form” and is included as an attachment to this Manual.

Compliance records for a project shall be retained until the later of (1) at least one year after the acceptance of the public work or five years after the cessation of all labor on a public work that has not been accepted, or (2) one year after a final decision or judgment in any litigation under California Labor Code §1742. For purposes of this section, a written summary or report includes information maintained electronically, provided that the summary or report can be printed out in hard copy form or is in an electronic format that (1) can be transmitted by e-mail or compact disk and (2) would be acceptable for the filing of documents in a federal or state court of record within this state.

19.2 Annual Reports

For all projects subject to an LCP, an Annual Report is required to be sent to the Director of the DIR no later than August 31, covering activities between July 1 of the preceding calendar year and June 30 of the year in which the report is due.

An annual report shall be made on form LCP-AR1 The Annual Report should shall also include (1) a certification of compliance with conflict of interest disclosure requirements by employees and consultants who participate in making governmental decisions, as defined under Title 2, California Code of Regulations, §18701, and (2) a current statement disclosing the information required under §16426(a)(2), (3) and (5).

Information in the Annual Report shall be reported in sufficient detail to afford a basis for evaluating the scope and level of enforcement activity of the LCP.

The Authority’s failure to submit their own (non-performance) annual report may result in the revocation of their LCP by the DIR.

20 PROJECT FILES – LCP Document Control System

The following is a summary of the procedures used for all labor compliance projects.

20.1 Electronic Project Tracking Log

Each project will have a Document Tracking Log created especially for that project. The Document Tracking Log is an electronic record of all documents received for all project contractors. It is used for reporting the contractor's level of compliance and for determining which required documents remain outstanding.

In some cases the tracking log is used to substantiate contractor's monthly progress payment invoices, which makes the accuracy of the tracking log especially critical. The tracking log also serves as a Delinquent Document Report, which is sent out monthly to contractors to notify them of documents that are due. The Report should be sent via PDF, as should all formal letters and documents transmitted by email.

When documents are received, the tracking log should reflect the following notations:

Document Received	**Update Field w/ Notation**	**Other Fields to Update / with**
CSLB printout	"License Status" & "Workers Comp" / Indicate Active or Inactive & WC Expiration Date	If "in-active," update the field called "Issues/Audits"
LCP Checklist	"LCP Checklist" w/ Received	
DAS 140	"DAS 140" w/ Received: (state the trades the form was received for)	
CAC 2	• "CAC 2" w/ Received & indicate the month(s) received • If training fund contributions are paid to the Union Trust Fund, notate "See Trust Fund Reports"	"CAC 2 Due" (enter the next month that the contractor must submit a CAC 2 form for)
Fringe Benefit Statement	"Fringe Benefit Statement" / Received	"Fringe Benefit Statement Paid How" (enter cash or Trust Fund & which trusts they are paying into)

Document Received	Update Field w/ Notation	Other Fields to Update / with
CPRs	"Latest CPR" / enter the week-ending date	• "Missing CPRs" (enter all week-ending dates for any missing CPRs) • "Trust Fund Reports Due" (enter the month(s) for each month work was reported on the CPRs) • If a CPR is noted as already received, make the 2nd one as "copy." Ensure that the 1st CPR was audited; if so, destroy the 2nd copy. • Enter all work classifications that appear on the CPR into the appropriate column in the log. Also enter wage determination numbers that correspond to the work classifications.
"Final" CPR	"Final CPR" / enter the week-ending date	
Trust Fund Reports	"Latest Trust Fund Report" / enter the month & year	"Missing Trust Fund Reports" (enter the next month that the contractor must submit a Trust Fund Report for)

20.2 Audit File System

In preparing a case for additional review, either by The Authority or by the DLSE, the following critical steps should be routinely applied in every prevailing wage violation case and particularly for those cases that lead to the filing of a Notice of Withholding of Contract Payments. Each individual audit needs a separate Audit file, with copies of all pertinent documents, which may include any or all of the following documents: *(Note: original documents need to stay in the main file and must not leave the office)*

- Written Narrative describing the violations and includes:
  - Applicable Prevailing Wage Determination
    - For each classification appearing in the audit, the corresponding determination should be provided
    - Include any applicable increases
  - Scope of Work for Trade Classifications Used
    - If the complainant has performed work outside the scope for the trade, this information should be noted with reference to the scope outlined by the DIR
  - Bid Information

        - Advertisement Date(s)
        - List of Subcontractors
        - Contract award amounts
        - Description of project
- Copy of Worker Complaint
    - On-Site Interview Sheets with notes
    - Calendar of dates and hours worked
    - Copies of check stubs or other form of proof of underpayment
    - Document all attempts to authenticate the complaint
    - Other supporting documentation
- Copy of all Correspondence to Contractor
    - Pre-Bid Handout
    - Pre-Construction Handout
    - LCP Checklist
    - Initial notification of complaint
    - Invitation to review the preliminary findings
    - Requests for additional documentation such as cancelled checks, check stubs, time cards, cash receipts, ledgers, etc.
    - Log of all calls to contractor with notes about the content of discussion
- CPRs
    - Specifically for the time period covered in the complaint
    - Accompanied by the notes made by the auditor
- Inspector's Daily Log
    - Detailed record of work performed by date and the number of workers on the project
    - Records should correspond to the time period covered in the complaint
- Notice to Proceed
    - Official project start and completion dates
    - Duration of project
- Notice of Completion
    - With date stamp showing when it was recorded
    - Any withholding or action must take place within 180 days from the date of recording
    - Another 180 days is granted beyond this date if funds are still available in contract
- Notice of Withholding of Contract Payments
    - Attach copy of the audit spreadsheet
- Memo to File

- Should explain the circumstances and reasons for case closure without action
- Provides explanation and reasons for any settlement or agreement reached with contractor or other parties

21 DOCUMENT SECURITY AND LOCKDOWN

All Labor Compliance documents are to be treated as confidential information, which must be kept and maintained secured. The Authority should maintain documents in locking file cabinets and electronic documents should only be accessible by LCP staff.

22 TERMS, DEFINITIONS AND ACRONYMS

Like most fields, labor compliance has its own unique vocabulary. The terms defined below represents the key terms used in labor compliance.

Affected Contractor or Subcontractor: A contractor or subcontractor (as defined under California Labor Code §1722.1) to whom the Labor Commissioner has issued a civil wage and penalty assessment pursuant to California Labor Code §1741, or to whom an Awarding Body has issued a notice of the withholding of contract payments pursuant to California Labor Code §1771.6, or to whom the Labor Commissioner or the DAS has issued a notice assessing penalties for noncompliance with payroll record obligations under California Labor Code §1776.

Normally, the assessment and withholding is made against the prime contractor. In the event that full payment is made to the subcontractor or the amount of underpayment exceeds the amount still owed to the subcontractor, the Prime Contractor is responsible for the total amount of the assessment.

Amount Equal to the Underpayment: The total of the following determined by payroll review, audit, or admission of contractor or subcontractor[35]:

1. The difference between amounts paid workers and the correct General Prevailing Rate of Per Diem Wages, as defined in California Labor Code §1773, and determined to be the prevailing rate due workers in such craft, classification or trade in which they were employed and the amounts paid.

2. The difference between amounts paid on behalf of workers and the correct amounts of Employer Payments, as defined in California Labor Code §1773.1 and determined to be part of the prevailing rate costs of contractors due for employment of workers in such craft, classification or trade in which they were employed and the amounts paid.

3. Estimated amounts of “illegal taking of wages.”

4. Amounts of apprenticeship training contributions paid to neither the program sponsor’s training trust nor the CAC.

5. Estimated penalties under California Labor Code §§1775, 1776, and 1813; Labor Commissioner approval is required for §1776 and §1813 penalties.

Area of Determination: The area of determining the prevailing wage is the “locality” or the “nearest labor market area,” as determined by the DIR. Consider the mobility of each craft, classification and type of work when determining the area.

[35] See California Code of Regulations §16435.

Assessment: A civil wage and penalty assessment issued by the Labor Commissioner or his or her designee pursuant to California Labor Code §1741, and it also includes a notice issued by either the Labor Commissioner or the DAS pursuant to California Labor Code §1776.

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 for public works. See California Labor Code §1722.

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

Bid Advertisement Date: *See "Date of Notice or Call for Bids" below.*

Certified: The affirmation of a person with the authority to 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.

CLSB: California State Licensing Board

Coverage: This means being subject to the requirements of Part 7, Chapter 1 of the Labor Code as a "Public Work." This includes all formal coverage determinations issued by the DIR.

Certified Payroll Report (CPR): Weekly report submitted by contractors listing the names, addresses, social security numbers, hours and days worked, rates of pay, deductions, gross and net pay, and method of payment for each worker employed on a public works project. Each CPR is submitted along with a Statement of Compliance signed by a representative from the contractor stating that the information stated in the CPR is true and correct under penalty of perjury.

Division of Apprenticeship Standards (DAS): The DAS is the branch of the DIR that manages apprentice programs and apprentice wages.

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 that 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, this means calendar days.

Delinquent Payroll Records: Those not submitted on the date set in the contract.

Department of Industrial Relations (DIR): The governmental entity that determines and governs California prevailing wage. The DAS and DLSE are branches of the DIR.

Director: The Director of the DIR or his/her duly authorized representative.

Division of Labor Standards Enforcement (DLSE): The DLSE is the enforcing entity for the state that approves the assessments. For projects operating under an approved LCP, the LCP steps in to the shoes of the DLSE up unto the point of assessment of penalties and approval of forfeitures. An LCP is required to seek approval from the DLSE for any forfeiture and penalties the LCP has determined are owed for nonpayment of wages.

Duly Authorized Representative: An employee of the DIR.

Effective Date: The date upon which the determinations of the Director go into effect. This date is 10 days after the issue date of the determination.

Employer Payments: Includes all of the following:

1. Contributions made by a contractor or subcontractor to a trustee or to a third person pursuant to a fund, plan, or program for the benefit of employees, their families and dependents, and retirees.

2. Costs to the contractor or subcontractor that 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 that was communicated in writing to the workers affected.

3. Contributions made by a contractor for apprenticeship or other training programs authorized by §§3071 and/or 3093 of the California Labor Code.

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 DAS when review is sought from a notice issued by that agency that assesses penalties under California Labor Code §1776.

Expiration Date: The date when the determinations of the Director are subject to change.

Forfeitures: The amounts of unpaid penalty and wage money assessed by the LCP for violations of the prevailing wage laws[36].

General Prevailing Rate of Per Diem Wages: Includes all of the following:

1. The prevailing basic straight-time hourly rate of pay.

[36] See California Code of Regulations §16436(a).

2. The prevailing rate for holiday and overtime work.

    a. Holiday – Work performed on certain holidays may require the payment of overtime or double time. A list of designated holidays for each craft or classification of labor can be found on the DIR website[37]. Each wage determination will specify the appropriate wage rate for holiday work.

    b. Overtime – Work performed by employees on public works in excess of eight hours per day and 40 hours per week must be paid for at not less than one-and-one half times the basic rate of pay (California Labor Code §1815). Each wage determination will specify the wage rate required for overtime pay. Failure to pay the required rate will subject the contractor to a penalty of $25 per worker per violation (California Labor Code §1813).

    c. Saturday/Sunday Work – Most classifications of workers require the payment of overtime or double time for work performed on Saturdays and Sundays. Each wage determination will specify the required wage rate for this work. Pay attention to any footnotes that may contain exceptions or special requirements.

    d. Exceptions: Exceptions to paying overtime wages are explained in detail at California Code of Regulations §16200(a)(3)(F) and must be narrowly construed. In summary, they include the following 4 exemptions:

        i. If a workweek other than Monday through Friday is a fixed business practice or is required by the Awarding Body, no overtime payment is required for the first eight hours on Saturday or Sunday

        ii. If the collective bargaining agreement provides for Saturday and Sunday work at straight-time, no overtime payment is required for the first eight hours on Saturday or Sunday

        iii. If the Awarding Body determines that work cannot be performed during normal business hours or work is necessary at off hours to avoid danger to life or property, no overtime is required for the first eight hours in any one calendar day, and 40 hours during any one calendar week

        iv. No overtime payment is required for less than 40 hours in a standard work week or for less than eight hours in a calendar workday unless specified in the collective bargaining agreement used as the basis for the prevailing wage determination

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 following types:

[37] www.dir.ca.gov/OPRL/statistics_research.html

a. Medical and hospital care, prescription drugs, dental care, vision care, diagnostic services, and other health and welfare benefits.

b. Retirement plan (pension) 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, 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 collective bargaining agreement.

i. Other benefits for employees, their families and dependents, or retirees as the Director may determine.

F O C U S

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

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

Hearing Officer: Means any person appointed by the Director pursuant to California Labor Code §1742(b) and California Code of Regulations §17204 to conduct hearings and other proceedings under California Labor Code §1742 and these rules.

Inadequate Payroll Records[38]: Any one of the following:

1. A record lacking the information required by California Labor Code §1776.

2. A record which contains the required information but not certified, or certified by someone not an agent of the contractor or subcontractor.

3. A record remaining uncorrected for one payroll period after the LCP has given the contractor or subcontractor notice of inaccuracies detected by audit or record review; however, prompt correction will stop any duty to withhold if such inaccuracies do not amount to one percent of the entire weekly CPR in dollar value and do not affect more than half the persons listed as workers employed on that Certified Weekly Payroll, as defined in California Labor Code §1776 and California Code of Regulations §16401.

Interested Party: When used in reference to a particular prevailing wage determination made by the Director, "interested parties" include:

1. Any contractor or subcontractor, or any organization, association, or other representative of any contractor or subcontractor likely to bid on or to perform a contract for public work that is subject to the particular prevailing wage determinations.

2. Any worker who may be employed on a public work project subject to a prevailing wage determination, or any labor organization or other representative of such a person, including the collective bargaining representative.

3. Any Awarding Body or association concerned with the administration of a public works contract or proposed contract that is subject to a prevailing wage determination.

Helper: Any sub-journeyman classification; assistant to a journeyman. Helpers may not be used in lieu of legally required apprentices.

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

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

Issue Date/Issuance: Determined by the date on which the copies of the Director's determination were mailed.

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[38] See California Code of Regulations, 2004 Amendments, §16435(d).

Labor Compliance Program (LCP): California Labor Code §1771.5 allows an Awarding Body to adopt an LCP, which is an organized series of activities designed to fulfill the monitoring and enforcement of the requirements of the California Labor Code and the California Code of Regulations. An LCP is required of all awarding bodies seeking to use the following public funds (a comprehensive list of statutes that require Awarding Bodies to have a LCP shall be maintained on the Department of Industrial Relations' website):

1. The Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006 (Proposition 84).

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 §1720) of the California Labor Code.

Labor Compliance Officer (LCO): The Labor Compliance Officer is responsible for enforcing labor compliance requirements.

Maintenance: Includes any and all of the following:

1. Routine, recurring and usual work for the preservation, protection and keeping of any publicly owned or publicly operated facility for its intended purposes in a safe and continually usable condition.

2. Carpentry, electrical, plumbing, glazing, 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.

3. Landscape maintenance. See California Code of Regulations §16000. Exception: Landscape maintenance work by "sheltered workshops" is excluded. See definition of "Sheltered Workshop" below.

Maintenance does *not* include the following:

1. Janitorial or custodial services of a routine, recurring, or usual nature.

2. Protection of the sort provided by guards, watchmen or other security forces.

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 similar circumstances.

Nearest Labor Market Area: The nearest geographical area from which workers to be used in the performance and execution of the public work can be drawn.

Non-Performance Report: The contractor must complete a non-performance report form when no work is performed on the project for a period of time. On the form that contractor states there was no payroll for a specific time period. All days for a project must be accounted for, including Saturdays, Sundays and holidays.

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 [California Code of Regulations §17208].

Payroll Records: All time cards, cancelled checks, cash receipts, trust fund forms, books, documents, schedules, forms, reports, receipts or other evidences that 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 assigned 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 Awarding Body, or any agent or officer thereof, authorized to act for or on behalf of any of the foregoing.

Political Subdivision: Includes any county, city, district, public housing authority, or public agency, and assessment or improvement districts.

Per Diem Wages: See *Wages*.

Predetermined Changes: Definite changes to the basic hourly wage rate, overtime, holiday pay rates, and employer payments that are known and enumerated in the collective bargaining agreement at the time of the bid advertisement date and that are referenced in the general prevailing rate of per diem wages. Contractors must pay the amount that was predetermined if these changes are modified prior to their effective date. Predetermined changes that are rescinded prior to their effective date will not be enforced. Additionally, rate increases that occur during the life of the project but were not predetermined at the time of the bid advertisement date are not to be enforced.

Prevailing Rate: Includes the following:

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 there is no single rate being paid to a majority, then the single rate being paid to the greater number of workers is prevailing. The rate being paid to the greatest number of workers – whether or not the number of workers is a majority – is considered the modal rate. If there is no modal rate, then an alternate rate will be established by considering collective bargaining agreements, Federal rates, or other data, such as wage survey data.

2. Other employer payments included as part of the total hourly wage rate, from which the prevailing basic hourly wage rate was derived. In the event that the

total hourly wage rate does not include any employer payments, then the Director may establish a prevailing employer payment rate.

3. The rate for holiday or overtime work will 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 will be prevailing.

Per California Labor Code §1771, the prevailing rate is to be paid for all work performed under contract on projects with public funding of over $1,000, including maintenance work.

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. 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 Awarding Body.

Public Works: "Construction, alteration, demolition, installation, or repair work done under contract and paid for in whole or in part out of public funds, except work done directly be any public utility company pursuant to order of the Public Utilities Commission or other public authority." See §§1720, 1720.2, 1720.3, and 1771 of the California Labor Code for more information.

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 California Labor Code §1771.6(b).

Request for Review of Forfeitures: An assessment made by an Awarding Body/Labor Compliance issues an assessment of penalties against a contractor for violations on the public works including but not limited to the underpayment of wages, misclassification of workers, underreporting of hours.

An awarding body/LCP can also assess penalties against a contractor for violations of California Labor Code §1776 for incomplete, inaccurate or delinquent CPRs. As of October 2009, these penalties are subject to the review of DLSE and can no longer be assessed by the LCP/ Awarding Body without approval.

An awarding body wishing to assess penalties against a contractor for violations of California Labor Code §1813 and §1774 needs to request a review of forfeitures by the Deputy Labor Commissioner.

§1013 of the California Code of Civil Procedure (a): In case of service by mail, the notice or other paper shall be deposited in a post office, mailbox, subpost office, substation, or mail chute, or other like facility regularly maintained by the United States Postal Service, in a sealed envelope, with postage paid, addressed to the person on

whom it is to be served, at the office address as last given by that person on any document filed in the cause and served on the party making service by mail; otherwise at that party's place of residence. The service is complete at the time of the deposit, but any period of notice and any right or duty to do any act or make any response within any period or on a date certain after the service of the document, which time period or date is prescribed by statute or rule of court, shall be extended five calendar days, upon service by mail, if the place of address and the place of mailing is within the State of California, 10 calendar days if either the place of mailing or the place of address is outside the State of California but within the United States, and 20 calendar days if either the place of mailing or the place of address is outside the United States, but the extension shall not apply to extend the time for filing notice of intention to move for new trial, notice of intention to move to vacate judgment pursuant to Section 663a, or notice of appeal. This extension applies in the absence of a specific exception provided for by this section or other statute or rule of court. The copy of the notice or other paper served by mail pursuant to this chapter shall bear a notation of the date and place of mailing or be accompanied by an unsigned copy of the affidavit or certificate of mailing.

In the case of service by Express Mail, the notice or other paper must be deposited in a post office, mailbox, subpost office, substation, or mail chute, or other like facility regularly maintained by the United States Postal Service for receipt of Express Mail, in a sealed envelope, with Express Mail postage paid, addressed to the person on whom it is to be served, at the office address as last given by that person on any document filed in the cause and served on the party making service by Express Mail otherwise at that party's place of residence. In case of service by another method of delivery providing for overnight delivery, the notice or other paper must be deposited in a box or other facility regularly maintained by the express service carrier, or delivered to an authorized courier or driver authorized by the express service carrier to receive documents, in an envelope or package designated by the express service carrier with delivery fees paid or provided for, addressed to the person on whom it is to be served, at the office address as last given by that person on any document filed in the cause and served on the party making service; otherwise at that party's place of residence. The service is complete at the time of the deposit, but any period of notice and any right or duty to do any act or make any response within any period or on a date certain after the service of the document served by Express Mail or other method of delivery providing for overnight delivery shall be extended by two court days, but the extension shall not apply to extend the time for filing notice of intention to move for new trial, notice of intention to move to vacate judgment pursuant to Section 663a, or notice of appeal. This extension applies in the absence of a specific exception provided for by this section or other statute or rule of court. The copy of the notice or other paper served by Express Mail or another means of delivery providing for overnight delivery pursuant to this chapter shall bear a notation of the date and place of deposit or be accompanied by an unsigned copy of the affidavit or certificate of deposit.

Service by facsimile transmission shall be permitted only where the parties agree and a written confirmation of that agreement is made. The Judicial Council may adopt rules implementing the service of documents by facsimile transmission and may provide a form for the confirmation of the agreement required by this subdivision. In case of service by facsimile transmission, the notice or other paper must be transmitted to a facsimile machine maintained by the person on whom it is served at the facsimile machine telephone number as last given by that person on any document which he or

she has filed in the cause and served on the party making the service. The service is complete at the time of transmission, but any period of notice and any right or duty to do any act or make any response within any period or on a date certain after the service of the document, which time period or date is prescribed by statute or rule of court, shall be extended, after service by facsimile transmission, by two court days, but the extension shall not apply to extend the time for filing notice of intention to move for new trial, notice of intention to move to vacate judgment pursuant to Section 663a, or notice of appeal. This extension applies in the absence of a specific exception provided for by this section or other statute or rule of court. The copy of the notice or other paper served by facsimile transmission pursuant to this chapter shall bear a notation of the date and place of transmission and the facsimile telephone number to which transmitted or be accompanied by an unsigned copy of the affidavit or certificate of transmission which shall contain the facsimile telephone number to which the notice or other paper was transmitted.

1013a. Proof of service by mail may be made by one of the following methods:
(1) An affidavit setting forth the exact title of the document served and filed in the cause, showing the name and residence or business address of the person making the service, showing that he or she is a resident of or employed in the county where the mailing occurs, that he or she is over the age of 18 years and not a party to the cause, and showing the date and place of deposit in the mail, the name and address of the person served as shown on the envelope, and also showing that the envelope was sealed and deposited in the mail with the postage thereon fully prepaid.

(2) A certificate setting forth the exact title of the document served and filed in the cause, showing the name and business address of the person making the service, showing that he or she is an active member of the State Bar of California and is not a party to the cause, and showing the date and place of deposit in the mail, the name and address of the person served as shown on the envelope, and also showing that the envelope was sealed and deposited in the mail with the postage thereon fully prepaid.

(3) An affidavit setting forth the exact title of the document served and filed in the cause, showing (A) the name and residence or business address of the person making the service, (B) that he or she is a resident of, or employed in, the county where the mailing occurs, (C) that he or she is over the age of 18 years and not a party to the cause, (D) that he or she is readily familiar with the business' practice for collection and processing of correspondence for mailing with the United States Postal Service, (E) that the correspondence would be deposited with the United States Postal Service that same day in the ordinary course of business, (F) the name and address of the person served as shown on the envelope, and the date and place of business where the correspondence was placed for deposit in the United States Postal Service, and (G) that the envelope was sealed and placed for collection and mailing on that date following ordinary business practices. Service made pursuant to this paragraph, upon motion of a party served, shall be presumed invalid if the postal cancellation date or postage meter date on the envelope is more than one day after the date of deposit for mailing contained in the affidavit.

(4) In case of service by the clerk of a court of record, a certificate by that clerk setting forth the exact title of the document served and filed in the cause, showing the name of the clerk and the name of the court of which he or she is the clerk, and that he or she is

not a party to the cause, and showing the date and place of deposit in the mail, the name and address of the person served as shown on the envelope, and also showing that the envelope was sealed and deposited in the mail with the postage thereon fully prepaid. This form of proof is sufficient for service of process in which the clerk or deputy clerk signing the certificate places the document for collection and mailing on the date shown thereon, so as to cause it to be mailed in an envelope so sealed and so addressed on that date following standard court practices. Service made pursuant to this paragraph, upon motion of a party served and a finding of good cause by the court, shall be deemed to have occurred on the date of postage cancellation or postage meter imprint as shown on the envelope if that date is more than one day after the date of deposit for mailing contained in the certificate.

Serve Upon the Labor Commissioner: Delivery of all documents, including legal process, to the local District Office of the Labor Commissioner. See website for DLSE District office locations: http://www.dir.ca.gov/dlse/DistrictOffices.htm

Sheltered Workshop: A nonprofit organization licensed by the DLSE employing mentally and/or physically handicapped workers.

Surety: Has the meaning set forth in California Civil Code §2787 and refers to the entity that issues the public works bond provided for in California Civil Code §§3247 and 3248 or any other surety bond that guarantees the payment of wages for labor.

Travel & Subsistence Payments: Because the law requires that workers receive the general prevailing rate of per diem as part of the contractor's prevailing wage obligation, there may be a requirement to pay travel/subsistence. Many classifications require the payment of mileage or subsistence for traveling certain distances. These requirements are contained in the collective bargaining agreement on file with DIR for each craft or classification of worker. Requirements may be downloaded from the DIR website at www.dir.ca.gov/OPRL/statistics_research.html

Wages: According to California Labor Code §§1773.1 (a) through 1773.1 (e), wages include employer payments of the following:

1. Health and welfare
2. Pension
3. Vacation
4. Travel
5. Subsistence
6. Apprenticeship or other authorized training programs as long as the cost of training is reasonably related to the amount of the contributions
7. Worker protection and assistance programs or committees established under the federal Labor Management Cooperation Act of 1978, to the extent that the activities of the programs or committees are directed to the monitoring and enforcement of laws related to public works
8. Industry advancement and collective bargaining agreements administrative fees
9. Other purposes similar to those above

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

Willful Violation: California Labor Code §1777.1(d) defines the standard applied for a willful violation. Specifically §1777.1(d) states: "A willful violation occurs when the contractor or subcontractor knew or reasonably should have known of his or her obligations under the public works law and deliberately fails or refuses to comply with its provisions."

Withhold: To cease payments made by the Awarding Body, or others who pay on its behalf, or agents, to the general contractor. Per California Code of Regluations §16435, The Awarding Body may withhold contract payments when payroll records are delinquent or inadequate or when, after investigation, it is established that underpayment has occurred; "Delinquent payroll records" means those not submitted on the date set in the contract; "Inadequate payroll records" are any one of the following:(1) A record lacking the information required by California Labor Code §1776; (2) A record which contains the required information but not certified, or certified by someone not an agent of the contractor or subcontractor; (3) A record remaining uncorrected for one payroll period, after the LCP has given the contractor or subcontractor notice of inaccuracies detected by audit or record review. Provided, however, that prompt correction will stop any duty to withhold if such inaccuracies do not amount to one percent of the entire CPR in dollar value and do not affect more than half the persons listed as workers employed on that CPR, as defined in California Labor Code §1776 and California Code of Regulations §16401.

Withholding of Contract Payments: A notice of withholding is served on a contractor/ subcontractor once the Deputy Labor Commissioner has approved a request for review of forfeitures.

An Assessment, a Notice of Withholding of Contract Payments, or a notice assessing penalties under California Labor Code §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 §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.

Worker: For compliance purposes, those employed by contactors or subcontractors in the execution of any contract for public works[39].

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

[39] See California Labor Code §1772.

Appendix A: Sample Pre-Bid Meeting Handout

LABOR COMPLIANCE PROGRAM REQUIREMENTS

- This project is subject to the City of Hesperia's (The City) Labor Compliance Program (LCP). The Solis Group (TSG) monitors and enforces The City's LCP.

- This project is a public works project. Therefore,
  - All contractors must be properly licensed and maintain current workers' compensation insurance
  - All contractors must be registered with the Department of Industrial Relations (DIR)
  - All workers must be paid prevailing wages (as determined by the California Department of Industrial Relations and/or Federal Department of Labor), including fringe benefit (employer) payments, and training fund contributions
  - Contractors must abide by the laws pertaining to the use of apprentices
  - Contractors must submit Certified Payroll Reports electronically to the DIR and all required LCP-required documentation on a weekly/monthly basis to TSG

- Please take all of this into account when bidding on this project. You have to calculate your bid amount based upon paying your workers prevailing wages and the administrative costs involved in making sure your paperwork is complete and submitted to TSG on a weekly basis.

- The California State prevailing wage determination applicable to this project can be found on the DIR website at:

  http://www.dir.ca.gov/oprl/DPreWageDetermination.htm

- The Federal prevailing wage determination applicable to this project can be found on the Department of Labor website at:

  http://www.wdol.gov/

You must refer to the current *Prevailing Wage Determinations ( )*

On Projects with both Federal and State Funding, you must meet the requirements of both the Federal and State Determinations

- Finally, once The City selects a successful bidder, TSG will meet with the contractor to go over the Labor Compliance Program in complete detail. At this meeting we will discuss all the LCP details, the LCP document submittal schedule, and the ramifications & potential penalties for noncompliance.

- **If you have any questions about which prevailing wages to use for this project, or any questions about The City's LCP, contact:**

[Contact Info Here]

THE SOLIS GROUP • Labor Compliance Officers for West Basin Municipal Water District
131 N. El Molino Ave. Suite 100, Pasadena, CA 91101
Phone: (626) 685-6989 • Fax: (626) 685-6985

Appendix B: Audit Rationale Sheet

Audit Rationale Sheet

Project:			Prime Contractor:	
Affected Subcontractor:			Labor Compliance Officer leading the audit:	
Today's Date:			Labor Compliance support staff involved in the audit:	
Support staff involved in what capacity:			Prevailing Wage Determination applicable to this project:	
Craft(s) Involved:			Any Pre-Determined Increases? *If so, to which crafts, how much, & allocated where?*	
Type of Audit:	☐ Prevailing Wage Underpayment (Straight-Time)	☐ Prevailing Wage Underpayment (Over-Time)	☐ Training Funds Due	☐ Trust Fund / Fringe Benefit Payments Due
	☐ Under Reporting of Workers	☐ Under Reporting of Hours	☐ Worker Craft Misclassification	☐ Unregistered Apprentice(s)
	☐ Other - Describe:			

Identify all information that supports the audit findings:

☐ CPRs	☐ Trust Fund Reports	☐ Cancelled Checks
☐ Time Sheets	☐ CAC-2's	☐ Field Observations
☐ Sign-In Sheets	☐ CAC Website Printout	☐ Witness Statements
☐ Time Cards	☐ DAS Website Printout	☐
☐ IOR Reports	☐ Worker Complaint	☐
☐ Daily Reports	☐ On-Site Interviews	☐
☐ Contract	☐ Pictures	☐

Describe preliminary findings and rationale used to come to the audit conclusion:

Recommended corrective action necessary to meet compliance requirements:

Routing (if required):

Rev. Aug.2009

Appendix C: Worker Complaint Form (English)

Public Works
Worker Complaint Form

Complainant General Information

Please Print

Name		Social Security	
Mailing Address		City	Zip code
Home Telephone	Cellular Phone	Date of Birth	

Employer Information

Name of Business/Employer	Contractor's Telephone Number	
Mailing Address	City	Zip code
Name of person that hired you		
Name(s) of anyone involved in the Underpayment of Wages and their title/role for the company.		

Project Information

Project Name

Awarding Body

Location of the project (address, city, county)

What was your job/work classification? What work did you do?

What tools and equipment did you use?

Who did you work with on this project? List all workers.

1. 2.

3. 4.

5. 6.

Approximate dates that you worked on this project:

From_____ To_____

Did you work on any other projects during the life of this project? ☐ Yes ☐ No

If Yes, please list the other projects that you worked on _____

Did you receive travel and subsistence payments ☐ Yes ☐ No

If no, please list any monies received for travel and other related expenses

Are you still working for this contractor? ☐ Yes ☐ No

If yes, are you still working on this project? ☐ Yes ☐ No

What is/was your hourly rate of pay on this project? _____

Was there a predetermined rate of pay that you agreed to when you were hired? ☐ Yes ☐ No

If yes, what was the amount you were told you would be paid? _____

Who was this agreement made with? _____

1

Did your pay rate ever increase or decrease for work performed on this project? ☐ Yes ☐ No

If Yes, when did the increase take effect?

How where you paid? ☐ Check ☐ Cash ☐ Both Check and Cash

If Applicable; When did you start receiving cash payments? When did they cease?_____

Who was responsible for the cash distribution of your wages? _____

Did you receive a statement or stub that demonstrated your hours worked and the deductions for the pay period? ☐ Yes ☐ No

Did you work Overtime on the project? ☐ Yes ☐ No If yes, were you paid for the overtime work? ☐ Yes ☐ No

If yes, what was the rate you were paid for overtime work? _____

How were you paid for the overtime? ☐ Check ☐ Cash ☐ Both Check and Cash

Where you ever told to say you were paid more than what you were actually paid? ☐ Yes ☐ No

Where you ever asked to return money to the company or any representative of the company? ☐ Yes ☐ No

If yes, who did you return the money to? _____

Where you threatened or intimidated for any of the following:

- If you complained about making less than the prevailing wage rate; ☐ Yes ☐ No
- Refused to sign a release stating that you were paid correctly; ☐ Yes ☐ No
- Refusing to kickback money to the contractor or a representative; ☐ Yes ☐ No
- Not being willing to work mandatory overtime and; ☐ Yes ☐ No
- Talking to LCP officers or anyone else requesting wage information. ☐ Yes ☐ No
- Other_____

If you answered yes to any of the above, who was the person who made threats against you?

If you complained about not receiving proper wages, what was the reason provided to you by the contractor?

Who did you speak to regarding this complaint?

Did you ever sign a timesheet? ☐ Yes ☐ No

Who kept records of your hours worked?_____

Did you have any private records of your hours? ☐ Yes ☐ No

Do you have any transmittals or any other proof that demonstrates that you sent your hours to the appropriate person? ☐ Yes ☐ No

List any proof you have provided as evidence supporting this complaint

1.

2.

Did you work 40 hours per week on the project? ☐ Yes ☐ No

If no, did you provide TSG with a calendar listing exceptions to the 40-hour workweeks? ☐ Yes ☐ No

At what time did you start work_____ At what time did your work day end_____

Did you report to yard prior to going to the job site? ☐ Yes ☐ No If yes what time did you arrive at the yard? _____

2

Please list any other reason that you are filing a complaint against your current employer. Remember to include any other information that you feel is necessary and is not covered above.

_____

_____

_____

☐Check here if additional page is required for additional information

I hereby certify that this is a true statement to the best of my knowledge and belief.

_____ _____

Signature Date

3

Appendix D: Worker Complaint Form (Spanish Sample)

Obras Públicas
Queja Laboral

Información General del Trabajador

Favor de llenar con letra de molde

Nombre		Seguro Social	
Domicilio		Cuidad	Código Postal
Teléfono de casa	Teléfono celular	Fecha de nacimiento	

Información de su Empliador

Nombre del Contratista/ Compañía	Número Telefónico de la Compañía/ Contratista	
Domicilio	Cuidad	Código Postal
Nombre de la persona quien lo contrató		
Nombre de la persona involucrada en el pago de sueldos		

Información del Proyecto

Nombre del proyecto

Agencia que adjudicó el proyecto (nombre del distrito)

Ubicación del proyecto (domicilio, cuidad, condado)

Qué tipo de trabajo hizo en el proyecto?

Qué herramientas usaba o estaban disponibles para su uso en el proyecto

Con quien trabajo usted en este proyecto?

1. 2.
3. 4.
5. 6.

Fechas aproximadas en que usted trabajo en el proyecto

De_____ Hasta_____

Trabajó usted en otros proyectos durante este tiempo? _ Sí ☐ No

Si respondió sí, favor de alistar los proyectos en donde usted trabajó_____

Recibió paga por su millaje y gastos del viaje? _ Sí ☐ No

Favor de alistar las cantidades pagadas a usted para gastos de viajes.

Todavía trabaja usted para el contratista? _ Sí ☐ No

Si respondió sí, todavía trabajo usted en el proyecto? _ Sí ☐ No

Que era su sueldo para este proyecto? _____

Hubo algún acuerdo con el contratista cuando lo contrataron a usted? ☐ Sí ☐ No

Que fue la cantidad que le fue prometida a usted cuando fue contratado? _____

Con quien llego usted a este acuerdo? _____

Varió su sueldo en este proyecto? _ Sí ☐ No
Recibió algún aumento en sus sueldos durante este tiempo? ☐ Sí ☐ No

Si contestó sí, cuando tomó efecto?_____

De qué forma le pagarón? _ Cheque _ Efectivo _ Cheque y Efectivo

Como recibía su cheque? (por correo, del foreman, lo recogía de la compania)_____

En qué momento empezó a recibir pagos en efectivo? En qué momento paró de recibir efectivo?_____

Recibió un talón de cheque donde alistaba sus horas, deducciones y sueldos por el periodo?_____

Quien era la persona encargada de repartir pagos en efectivo ? _____

Trabajó tiempo extra en el proyecto? ☐ Sí ☐ No Se le pagó por el trabajo extra? ☐ Sí ☐ No

A cuanto le pagaban por hora por el tiempo extra? _____

En qué forma le pagaron el tiempo extra? ☐ Cheque ☐ Efectivo ☐ Cheque y Efectivo

Fue usted instruido a decir que le pagaban más de lo que usted realmente ganaba? ☐ Sí ☐ No

Fue usted forzado a regresar dinero de sus sueldos a la compañía o a un representante de la compañía? ☐ Sí ☐ No

Si su respuesta es sí, a que persona le entregó usted el dinero? _____

Recibió usted amenazas o fue intimidado por cualquiera de lo siguiente:

- Por quejarse por sueldos no apropiados; _ Sí ☐ No
- Por no firmar una hoja diciendo que se le pagó todo lo debido; ☐ Sí _ No
- Por negarse a regresar dinero a la compañía o a sus representantes; ☐ Sí ☐ No
- Por negarse a trabajar tiempo extra y; ☐ Sí ☐ No
- Por hablar con representantes del distrito acerca de sus sueldos. ☐ Sí _ No
- Otras razones _____

Si contesto sí a cualquier pregunta, que persona(s) lo amenazaron?

Si usted se ha quejado de no recibir los sueldos debidos, que fue la respuesta del contratista?

con quien hablo acerca de sueldos debidos?

Llenó usted una carta de tiempo? _ Sí _ No

Quien mantenía los datos de sus horas trabajadas en el proyecto?_____

Mantuvo usted datos personales de sus horas? ☐ Sí ☐ No

Mantiene usted comprobantes de que usted mandó datos de sus horas a la persona indicada? ☐ Sí ☐ No

Aliste cualquier comprobantes que usted ha incluido

1.

2.

Trabajó las cuarenta horas en este proyecto? ☐ Sí ☐ No

Si respondió que no, agregó un calendario donde alista las excepciones? ☐ Sí ☐ No

A que horas trabajaba en el proyecto? de _____a_____

Se reportaba en la yarda antes de ir al proyecto? ☐ Sí ☐ No

Si contesto que sí, a qué hora se reportó a la yarda? _____

Sabe usted de otros trabajadores que también fueron afectados similarmente?

Nombre	Teléfono
1.	
2.	
3.	

Favor de dar otras razones de por qué usted está iniciando una queja contra el contratista.

_____

_____

_____

☐ Sí, fue necesario utilizar página(s) adicionales.

Yo declaro que la información presentada en esta queja es correcta.

_____ _____

Firma fecha

Appendix E: Training Program Agenda

The training program is based on the following steps:

1. **Review and discuss the CLC requirement**

   The applicable sections are in the Labor Code. A packet of the Sections will be distributed to staff for review prior to training. Packet will include applicable Opinion Letters and Precedential Decisions.

2. **Review and discuss the amended regulations and how they are applied**

   Copies will be distributed to staff. Although staff has copies of the latest amendments to regulations relating to CPRs and LCPs, there is a question as to whether they actually read and understand how they are applied.

3. **Discuss application of CLC requirements versus amended regulations**

   Discuss the differences between the CLC and the amended regulations, specifically how they work with and relate to each other.

4. **Discuss "real world" application of Labor Compliance**

   Bring in Compliance Representatives from the major crafts to discuss the nuances of their particular trade. An opportunity to meet various compliance representatives and discuss issues they may have and nuances of the trades. Discuss investigatory techniques applicable to their trade.

5. **Discuss best management practices with staff regarding investigatory techniques**

   What we learned and what we could share**.**

TRAINING PROGRAM AGENDA

I. California Labor Code

Section 204:	Payroll Periods (weekly, bi-weekly, and monthly)
Section 206.5:	Release of Claim for Wages
Section 207:	Posting of Paydays
Section 216:	Refusal to Pay Wages
Section 219:	More frequent or Greater Payment – Allowed
Section 223:	Secret Payments
Section 224:	Withholding or Diverting Payments (Authorization)
Section 226:	Itemized Statements
Sections 1720–1720.3:	Definition of Public Works Projects
Section 1727:	Withholding of Contract Payments

Section 1726:	Awarding Body must be Cognizant of Violations
Section 1729:	Withholding of Payments – Penalties
Section 1736:	Confidentiality of Employees
Sections 1741 – 1742:	Assessments and Review of Assessments
Section 1742.1:	Liquidated Damages
Section 1771:	Requirement of Payment of Prevailing Wages for work under contract
Section 1771.5:	Labor Compliance Programs
Section 1771.6:	Notice of Withholding
Section 1772:	Workers in Public Works Projects (Defined)
Section 1773.1:	Wages defined
Section 1773.3:	Notifications to State of Award of Public Works Projects
Section 1774:	Payment of no less than prevailing wages
Section 1775:	Forfeitures for payment of less than prevailing wages
Section 1776:	Payroll Records
Section 1777.1:	Penalties for Willful violations
Section 1777.5:	Employment of Apprentices
Section 1777.7:	Penalties for Non-Compliance of Apprenticeship Provisions
Section 1778:	Taking back payments
Section 1812:	Record of Hours Worked – Public Works Projects
Sections 1813 & 1815:	Overtime Provisions

II. Amendments to Regulations 2009

- Notifications for LCP approval by DIR and adoption by Awarding Bodies
- Use of electronic reporting forms
- Providing bid language to Awarding Bodies
- Method for reviewing payroll records
- Audit Records (DIR forms “Appendix B”)
- Audits to ascertain compliance with Labor Code Sections 224 and 226
- Withholding of Contract payments
- Uncorrected Payroll Records
- Assessments and Forfeitures (Defined)
- Project Postings
- Investigation methods and confirmation of payroll records
- Written summary of labor compliance activities per project (DIR form “Appendix C”)

III. Policies and Procedures Manual

IV. Opinion Letters and Precedential Decisions

- Overtime Payment for Saturday and Sunday Work (insert to P & P Manual)

- Authorized Deductions (Insert to P&P Manual)
- Overpayment of Wages

V. Collective Bargaining Agreements (Enforcement of)

- Subsistence and Travel
- Scope of Work
- Holidays

VI. Important Notices and Interim Determinations

VII. Investigatory Techniques

- Staff discussion – Best Practices (Internal)
- Best Practices – Other providers

VIII. Additional Training Resources

- Invite Labor Compliance Representatives from various trades to discuss particular nuances about their trades and contractors.

Appendix F: Labor Compliance Review & Enforcement Report Form

Suggested Single Project

Labor Compliance Review and Enforcement Report Form

Project Name: _____

Name of Approved Labor Compliance Program: _____

Bid Advertisement Date: _____

Acceptance Date: _____

Notice of Completion Recording Date: _____

Summary of Labor Compliance Activities

1. *Contract Documents Containing Prevailing Wage Requirements (Identify)*

   _____

   _____

   _____

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

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

_____

_____

_____

4. *Certified Payroll Record Review*

   a. *CPRs Received From:*

Contractor/Subcontractor	*Weeks ending ("w/e") through w/e*
_____	_____
_____	_____

_____ _____

b. *Classifications identified in CPRs and applicable Prevailing Wage Determinations*

Classification	*Determination No.*
_____	_____
_____	_____
_____	_____

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

a. *Independent Confirmation of CPR Data*

Contractor/Subcontractor	*Worker Interviews (Yes/No)*	*Reconciled CPRs w/ paychecks or Stubs (Yes/No)*
_____	_____	_____
_____	_____	_____
_____	_____	_____

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

Contractor/Subcontractor	*Recipients of Employer Payments*	*Written confirmation Obtained (Yes/No)*
_____	_____	_____
_____	_____	_____
_____	_____	_____

c. *Contributions to CAC or Other Approved Apprenticeship Program*

Contractor/Subcontractor	*Recipients of Contributions*	*Written confirmation Obtained (Yes/No)*
_____	_____	_____
_____	_____	_____
_____	_____	_____

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

Contractor/Subcontractor	*Additional amounts Paid to Workers*	*Additional Training Fund*	*Explanation*
_____	_____	_____	*
_____	_____	_____	*
_____	_____	_____	*

** Use separate page(s) for explanation*

6. Complaints Received Alleging Noncompliance with Prevailing Wage Requirements.

Name of Complainant	*Date Received*	*Resolution or Current Status*
_____	_____	*
_____	_____	*
_____	_____	*

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

7. Requests for Approval of Forfeiture to Labor Commissioner

Contractor/Subcontractor	*Date of Request*	*Approved/Modified/Denied*
_____	_____	_____
_____	_____	_____
_____	_____	_____

8. Litigation Pending Under Labor Code Section 1742

Contractor/Subcontractor	*DIR Case Number*
_____	_____
_____	_____
_____	_____

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

_____

Authorized Representative for LCP

Appendix G: Manual Receipt & Review Signature Sheet

POLICIES AND PROCEDURES MANUAL RECEIPT & REVIEW EMPLOYEE SIGNATURE SHEET

It is required that all staff to affirm their awareness and compliance with the rights and responsibilities involved in the operation of the LCP.

By signing below, the undersigned attest to the following:

"I have read and understood the Watershed Authority's Labor Compliance Policies & Procedures Manual, and will exercise the rights and responsibilities imposed on the Labor Compliance Program as an agent of the Awarding Body whose public works project the Watershed Conservation Authority is monitoring and enforcing labor compliance on."

Name of Employee	Signature	Date Signed	Manual Received & Reviewed *(Date on Cover)*

Appendix H: Sample Template for a Written Audit Narrative

REQUEST FOR APPROVAL OF FORFEITURE
Determination Narrative

Labor Compliance Audit / Investigation
Contractor: [Contractor]
Contractor License ######

District: [District]
Project: [Project Name/Code]
Prime Contractor: [Prime]

Watershed Conservation Authority
100 Old San Gabriel Canyon Rd., Azusa, CA 91702
Tel: (626) 815-1019 • Fax: (626) 815-1269

Watershed Conservation Authority Labor Compliance Program
Audit and Investigation of [Contractor] (License #######)
Project: [Project Name]

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Watershed Conservation Authority Labor Compliance Program
Audit and Investigation of [Contractor] (License #######)
Project: [Project Name]

1. STATEMENT OF ISSUES

Establish who we are and the project and contractor in question. Example: "[Awarding Body] monitors and enforces Labor Compliance requirements on [Awarding Body]'s Proposition 84 construction projects. In [Date], the [Awarding Body] awarded a contract to [Prime] for [describe and name project], a public works project. [Prime] then entered into a subcontract agreement with [Contractor] to [describe scope of work]."

Describe in broad terms the **violations** being alleged. Example: "In August 2009, two (2) XYZ Corp. workers contacted [Awarding Body] and filed complaints. They alleged that they had worked for Contractor, and had been paid $15 an hour for Cement Mason work done on the Project between January and April 2009. The workers had not been listed on Certified Payroll Reports (CPRs) submitted to the District by Contractor. The prevailing wage for Cement Masons on the Project was $38.77 per hour."

Describe in broad terms the **conclusions** the Awarding Body reached. Example: "After investigation, [Awarding Body] has concluded that the two workers employed by Contractor were paid less than prevailing wage to perform Cement Mason work on a public works project, a violation of California Labor Code §1774. As the workers did not appear on Certified Payroll Reports submitted and certified by Contractor, Contractor also violated Labor Code §1776(a) by submitting incorrect certified payroll records."

2. INVESTIGATIVE REPORT

Tell the story of the steps [Awarding Body] took to investigate the issue.

Don't include conclusions here ("[Awarding Body] determined the CPRs were falsified"); that's for the next section.

Include such steps as:

- When and how [Awarding Body] first heard about the issue
- Actions [Awarding Body] took to obtain information about the case: e.g. interviewing workers, requesting inspector logs and canceled checks, on-site contractor audit, etc.
- Responses made to any [Awarding Body] requests, and documentation or statements received in the course of the investigation.
- Contacts [Awarding Body] had with contractor, prime, district, etc. notifying them of issue (audit letters, meetings, phone calls, etc.), and responses received from them. **IMPORTANT**: 8 CCR §16437 requires "Evidence that before the forfeiture was sent to the Labor Commissioner (A) the contractor and subcontractor were given the opportunity to explain why there was no violation, or that any violation was caused by good faith mistake and promptly corrected when brought to the

contractor or subcontractor's attention, and (B) the contractor and subcontractor either did not do so or failed to convince the Labor Compliance Program of its position."

Be **specific**: include dates and methods that we contacted people.
Be **factual**: talk about what they actually said, not what we concluded from what they said.

Wrong: "The workers told [Awarding Body] *that they were underpaid."*
Right: "[Awarding Body] *sent letters to the workers listed on Contractor's CPRs on July 30, 2009, asking them to contact* [Awarding Body] *if they had any questions about the wages they were paid. Three (3) workers responded by phone, and came into* [Awarding Body] *offices on August 18, 2009 to file formal complaints. All of them asserted that they had been paid $15.00 per hour in cash."*

Be **chronological**: tell the story in order to the present day.

3. AUDIT REPORT

3.1 EVIDENCE REVIEWED

Lay out all the information [Awarding Body] received that led to the determination, what we looked at in reviewing it, and how we came to the conclusions about what was trustworthy, what was unreliable, and what happened on the project. It may be helpful to list all the relevant evidence we have (e.g. worker statement, IOR report, sign-in sheet, [Awarding Body] interview sheet), and go through it one by one.

Establish facts – don't make assumptions even about simple things. Examples:

- How do we know the worker actually worked for the contractor? (Possible answer: He has a check stub from the contractor.)
- How do we know the worker worked on this project? (Possible answer: Workers who appeared on the CPRs claimed that he worked there as well.)
- How do we know how much the worker got paid? (Maybe he has a check stub, or maybe he made a specific statement about how much cash he received that we believe is more reliable than the CPR because of XYZ reasons.)
- How do we know what craft he performed? (We may have IOR reports, daily reports, worker statements, or [Awarding Body] interviewer records.)
- How do we know the daily reports are real? (Maybe we received them directly from the prime and they have a signature that matches the one on the contract.)

Give worker complaints a presumption of truth; this means that **if there is no evidence to contradict the statement**, it is treated as true. For example, if a worker says he was on a project on a certain day, but there's no sign-in sheet, no CPR, and no other

information one way or the other, then we can conclude he was on the project that day. If there's a CPR that doesn't list him, then that is evidence that he was not on the project that day (even if we know there are problems with the CPRs) and we must balance the evidence and make a judgment as to what most likely happened.

3.2 UNDERPAYMENT DETERMINATION METHODOLOGY

Discuss how [Awarding Body] used the available evidence to determine 1) that there was a violation and 2) how large the underpayment is. Example: "Since canceled checks were not provided to validate the amounts Contractor claimed to pay on the CPRs, [Awarding Body] has concluded that the Worker's statement was most likely accurate and that he was paid $15.00 per hour for his work on this project."

Things to include in this section:

- What pay rate we conclude the worker(s) received
- What other payments (fringes, training funds) we conclude were made that are credited toward prevailing wage
- Which hours/days the worker(s) were on the project
- What craft the worker(s) performed
- What prevailing wage determination applies (include the date of first bid advertisement and the county work was performed in)
- What the correct prevailing wage should be (point out any predetermined increases and adjustments thereto; different time periods may have different prevailing wages)

3.3 UNDERPAYMENT AMOUNT

Reference the audit worksheet, and summarize the total amount that we have determined is due (not including penalties).

Do not separate out wages and fringes, even if the contractor pays to a program; from a prevailing wage standpoint, they could make the payment all to the worker if they wanted (their union might sue them, but that's not an LCP issue). (If it's pretty well established that some of the money should go to a fringe benefit program, though, you can list that separately to be helpful.)
Do separate out training fund contributions due, since those legally must be paid to a program.

Example:

The attached audit worksheet shows the dates and hours for which underpayments were made according to the above methodology; [Awarding Body] concludes that Spectrum's workers performed a total of 101 hours for which prevailing wages were not paid. After giving Spectrum credit for the $22-25 per hour reported on the workers' pay stubs, the total prevailing wage underpayment is **$2,394.43**: $2,333.83 due in wages and fringes to the worker or

an approved plan, trust or program, and $60.60 in training amounts due to an approved training program. It should be noted that Spectrum ordinarily makes fringe benefit contributions to a union trust fund; making payment in this way would lead to $1,169.30 paid to the workers as basic hourly rate underpayments, and $1,225.13 paid to the trust fund (which includes the training amount).

4. AFFECTED CONTRACTOR/SUBCONTRACTOR INFORMATION

4.1 CONTRACT AMOUNT AND SCOPE

Follow the money from the contractor back to the prime: if the offending contractor was a third-tier, you might say "[Awarding Body] signed a contract on (date) with (Prime) in the amount of $$$ to build (Project). (Prime) then signed a contract with (sub) on (date) in the amount of $$$ to perform (scope of work). (Sub) then signed a contract with (3rd tier) on (date) in the amount of $$$ to perform (scope)."

Request actual contracts if you can; if not at least try to find out which spec sections the sub was contracted for. At the very least, get the CM or immediate prime of the violating contractor to state what scope of work the violator was contracted to perform.

4.2 CONTRACTORS' BACKGROUND AND OWNERSHIP

Include:

- License number of **violating** contractor, personnel associated with that license during the duration of the project, and other licenses those personnel are also associated with.
- License number of **prime** contractor, personnel associated with that license during the duration of the project, and other licenses those personnel are also associated with.

Example:

Spectrum Glass & Aluminum Inc. holds California Contractor License #732367, with Class B (General Contractor) and C17 (Glazing) classifications. John Michael Licursi is listed as the Responsible Managing Officer (RMO), Chief Executive Officer (CEO), and President associated with that license, according to the Contractors State License Board (CSLB) web site. Mr. Licursi has held those positions since 2/10/97, before the Learning Resource Center project began. He is also associated with two inactive licenses: as the Sole Owner of Spectrum Glass & Mirror, License #660542, and as the RMO/CEO/President of Ballatore Design & Construction Inc., License #786620. No other persons are on the Personnel List associated with any of the three licenses.

4.3 CONTRACTORS' PREVIOUS HISTORY

Talk about any previous audits there have been for this contractor on this project, what the issues were, and how they were resolved. If there were none, say so.

Talk about any other violations we know of (maybe we had them on another project, or a union gave us contact information for a district who had problems with them before).

Check the DLSE web site for previous Civil Wage and Penalty Assessments and §1741(c) decisions:
http://www.dir.ca.gov/dlse/DLSE-Databases.htm (scroll to bottom)

Check the OPRL page for Director's Enforcement Decisions: http://www.dir.ca.gov/oprl/PrevWageEncDecision.htm

Check LAUSD's listing of assessments:
http://www.laschools.org/contractor/lc/

If you find nothing, list the sources you checked and say you found nothing; if there's something there, summarize the issue and include a link.

5. RECOMMENDED PENALTIES

5.1 DETERMINATION OF WILLFUL VIOLATION

"Willful violation" is a technical term in the labor code. Quote the section:

> California Labor Code §1777.1(c) states that "A willful violation occurs when the contractor or subcontractor knew or reasonably should have known of his or her obligations under the public works law and deliberately fails or refuses to comply with its provisions."

Then establish the **two necessary parts** of a willful violation:

- The contractor "knew or reasonably should have known of his/her obligations"
  - If they signed an LCP checklist, mention what date it was signed.
  - If you have a copy of their contract with their prime, check to see whether it mentions that the project is public works or that prevailing wages are owed.
  - If they attended a pre-construction meeting, say so or mention the sign-in sheet.
  - If you feel it necessary to further establish that they knew, you can use other evidence such as statements made by the contractor to LCP investigators, previous public works projects (to show they're familiar with

the concept of prevailing wage), CPRs (if they listed people at prevailing wage, they probably knew they were supposed to pay that wage), etc.

- The contractor "deliberately fails or refuses to comply with [public works] provisions." Examples of evidence of deliberate failure or refusal:
  - CPRs that are altered or list nonexistent checks;
  - CPRs that consistently report fewer workers than other sources;
  - No response or an untruthful response when the LCP informed the contractor there was an issue;
  - Reports from workers that the contractor promised payment but never made it;
  - Failure to provide documentation when formally requested by the LCP.

Most of the time we'll ask for the maximum $200 penalty, unless it's really apparent it was a mistaken violation. Even then, once it was brought to the contractor's attention they should have corrected it, so we'd probably only ever ask for less than $200 if we think that the contractor believes in good faith that they're right. We can use the below language:

Calculation of Prevailing Wage Penalties Due

According to California Labor Code §1775(a)(1), the maximum penalty for a willful violation is "two hundred dollars ($200) for each calendar day, or portion thereof, for each worker paid less than the prevailing wage." For the reasons outlined above, [Awarding Body] recommends the maximum penalty.

As detailed in the attached Audit Worksheet, at $200 per worker per day, the **penalty amount results in:**

- **$$$$** - Amount due to [Awarding Body] for penalties associated with violations of California Labor Code §1774.

5.2 OVERTIME PENALTIES (§1813)

If there are overtime issues, there is no discretion: it's simply $25 per worker per day. Use the below language:

Calculation of Overtime Penalties Due

According to California Labor Code §1813, "The contractor or subcontractor 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 worker employed in the execution of the contract by the respective contractor or subcontractor for each calendar day during which the worker is required or permitted to work more than 8 hours in any one calendar day and 40 hours in any one calendar week in violation of the provisions of this article."

[Awarding Body] has determined that [Contractor]'s workers performed overtime on [Number] occasions without being paid overtime compensation. As detailed in the attached Audit Worksheet, at $25 per worker per day, the **penalty amount results in:**

- **$$$$** - Amount due to [Awarding Body] for penalties associated with violations of California Labor Code §1815.

NOTE: A violation of weekend or holiday rates is **NOT** an overtime violation, if the worker did not work more than 8 hours in a day or 40 hours in a week. The increased rate is simply the prevailing wage that applies on that weekend or holiday, and the violation is a §1774 violation.

5.3 PENALTIES FOR §1776 PAYROLL RECORD VIOLATIONS

If the contractor has failed to provide accurate payroll records upon WRITTEN request (not fax, phone, or email), we can ask for §1776 penalties. Give the date and method records were requested, type of records requested, mention the response received (no response, or partial response, or records that we believe are false), and quote §1776(h):

> "The contractor or subcontractor has 10 days in which to comply subsequent to receipt of a written notice requesting the records enumerated in subdivision (a). In the event that the contractor or subcontractor fails to comply within the 10-day period, he or she shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit one hundred dollars ($100) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated."

Example of calculation: We sent them a certified letter asking for checks for 10 workers, and they never responded. The return receipt says it was delivered on May 1, 2009. The Request for Approval of Forfeitures is dated August 11, 2009. 10 days from May 1 is May 11, and from May 11 to August 11 is 92 days, so that's 92 days x 10 workers x $100 = **$92,000**.

5.4 WAGE AND PENALTY ASSESSMENT

Use the following language, including all that apply (add others if there is an unusual circumstance):

[Awarding Body] finds Spectrum to be in willful violation of [Awarding Body]'s LCP and the following sections of the California Labor Code:

- §1774 – Underpayment of prevailing wages

Watershed Conservation Authority Labor Compliance Program
Audit and Investigation of [Contractor] (License #######)
Project: [Project Name]

- §1776 – Improper maintenance and submission of CPRs
- §1815 – Compensation for overtime

[Awarding Body] recommends that the maximum amount of penalties be assessed against Spectrum due to the willful nature of its violations.

[Awarding Body] is recommending that $XX,XXX.XX be withheld for the following:

- **$XX,XXX.XX** - Amount due on behalf of workers for prevailing wage underpayments.
- **$XXX.XX** - Amount due to the California Apprenticeship Council, or other approved training program, for unpaid training fund contributions.
- **$XXX.XX** - Amount due to [Awarding Body] for penalties associated with violations of California Labor Code §1774.
- **$XXX.XX** - Amount due to [Awarding Body] for penalties associated with violations of California Labor Code §1776.
- **$XXX.XX** - Amount due to [Awarding Body] for penalties associated with violations of California Labor Code §1815.

Watershed Conservation Authority 9 [Contractor] Narrative [Date]

Appendix I: Request for Approval of Forfeiture

REQUEST FOR APPROVAL OF FORFEITURE

(Under CCR Section 16437)

1. AWARDING BODY / THIRD PARTY LCP:

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

2. PROJECT INFORMATION:

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

3. CONTRACTOR INFORMATION:

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

4. LABOR COMPLIANCE PROGRAM INVESTIGATION AND FINDINGS:

Total Amount of Request for Notice of Withholding of Contract Payments:

Wages Due:	Training Funds Due:	Total Penalties Due:	Potential Liquidated Damages [Wages + Training Funds]:
LC 1775 Penalties Due:	LC 1813 Penalties Due:	LC 1776 Penalties Due:	Other:

[Provide narrative summaries covering the following]:

A. Statement of Issues.

B. Investigative Report (detailed narrative including but not limited to how the investigation was conducted including worker declarations, reviewing certified payroll records, verification of employer payment contributions, etc.).

C. Audit Report (detailed explanation of how audit was completed addressing each of the issues above).

D. Affected contractor and subcontractor information (how affected contractor and subcontractor were informed of potential violations; summary of their response with respect to violations and penalty issues; and any other information considered in determining recommended penalties).

E. Recommended penalties under Labor Code Section 1775(a) and basis for recommendation, including how factors in subsection (a)(2) of Section 1775 were applied to arrive at the recommended amount(s).

ATTACHMENTS
1. Audit Summary (Appendix C)
2. 1st Bid Advertisement Publication
3. Notice of Completion
4. Scope of Work
5. Complaint form(s) and Declarations, if any

Send the Request and all Attachments to:

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

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

Appendix J: DIR-PWC 100 Sample Form

STATE OF CALIFORNIA – DEPARTMENT OF INDUSTRIAL RELATIONS

TO: California Department of Industrial Relations
Division of Apprenticeship Standards
P.O. Box 420603
San Francisco, CA 94142

AWARDING AGENCY ID NUMBER

If you do not have an ID number please contact DAS

FROM: AWARDING BODY

CA

EXTRACT OF PUBLIC WORKS CONTRACT AWARD

A CONTRACT TO PERFORM PUBLIC WORKS UNDER LABOR CODE SECTION 1777.5 HAS BEEN AWARDED TO:

1. NAME OF GENERAL CONTRACTOR		2. CONTRACTOR'S LICENSE NO	
3. MAILING ADDRESS (STREET NUMBER OR P.O. BOX)		4. CITY	
		5. ZIP CODE	6. TELEPHONE NUMBER
7. GENERAL CONTRACTOR'S CONTACT EMAIL ADDRESS		8. ADDRESS/LOCATION OF PUBLIC WORKS SITE (INCLUDE CITY AND COUNTY): 8a. County	
9. . NAME OF PROJECT			
10. CONTRACT NUMBER	11. PROJECT NUMBER	12. DOLLAR AMOUNT OF CONTRACT AWARD	
13 . FIRST ADVERTISED BID DATE MONTH DAY YEAR	14 CONTRACT AWARD DATE MONTH DAY YEAR	12a ESTIMATED TOTAL PROJECT COSTS, IF DIFFERENT FROM ITEM 12 (see instructions).	
		15. WHICH STATUTE, IF ANY, APPLIES TO THIS PROJECT? None of these statutes apply Education Code §17250.20 (Design-build: school dis	
16. STATE CONSTRUCTION BONDS ☐ YES ☐ NO If YES, List the Sources and Dollar Amount of Bond Proceeds: SOURCES DOLLAR AMOUNT		17. WILL YOU OPERATE A DIR-APPROVED LABOR COMPLIANCE PROGRAM (LCP) FOR THIS PROJECT? ☐ YES ☐ NO	
		18. IS THERE A PROJECT LABOR AGREEMENT (PLA) ASSOCIATED WITH THIS PROJECT? *If yes, please email a copy to cmupla@dir.ca.gov* ☐ YES ☐ NO	
19. STARTING DATE (ESTIMATED OR ACTUAL) (MM/DD/YYYY)		20. COMPLETION DATE (ESTIMATED OR ACTUAL) (MM/DD/YYYY)	
21. BRIEF DESCRIPTION OF WORK TO BE PERFORMED		22 ☐ NEW CONSTRUCTION ☐ REMODELING ☐ ALTERATION, DEMOLITION, REPAIR OR MAINTENANCE	
23. CLASSIFICATION OR TYPE OF WORKER (CARPENTER, PLUMBER, ETC.) THAT WILL BE EMPLOYED BY THE CONTRACTOR(S) Abestos Boilermaker Please list Sub-contractors and their worker classifications on page 2			
24. Is language included in the Contract Award to effectuate the requirements of sections 1771, 1774, 1775, 1776, 1777.5, 1813, and 1815 of the Labor Code? ☐ YES ☐ NO			
25. SIGNATURE	26. TITLE	27. DATE	
28. PRINTED OR TYPED NAME	29. E-MAIL ADDRESS	30. TELEPHONE NUMBERS	
If different from above, name, title, and contact information of person responsible for carrying out Awarding Body's LCP or CMU responsibilities.			
31. NAME	32. TITLE	33. E-MAIL ADDRESS	34. TELEPHONE NUMBER

Duplication of this form is permissible

DIR-PWC 100 (rev. 10/11) successor to the DAS 13 form

EXTRACT OF PUBLIC WORKS CONTRACT AWARD (Continued)

Listing of Sub Contractors

Con. Lic. #	Contractor	Classification of workers
		Abestos Boilermaker Bricklayers Carpenters Carpet/Linoleum Cement Masons
		Abestos Boilermaker Bricklayers Carpenters Carpet/Linoleum Cement Masons
		Abestos Boilermaker Bricklayers Carpenters Carpet/Linoleum Cement Masons
		Abestos Boilermaker Bricklayers Carpenters Carpet/Linoleum Cement Masons
		Abestos Boilermaker Bricklayers Carpenters Carpet/Linoleum Cement Masons
		Abestos Boilermaker Bricklayers Carpenters Carpet/Linoleum Cement Masons
		Abestos Boilermaker Bricklayers Carpenters Carpet/Linoleum Cement Masons
		Abestos Boilermaker Bricklayers Carpenters Carpet/Linoleum Cement Masons

DIR-PWC 100 (rev. 10/11) successor to the DAS 13 form

Appendix K: Annual Report Reporting Form LCP-AR1

LCP-AR1

LABOR COMPLIANCE PROGRAM ANNUAL REPORT

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

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

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

LCP ANNUAL REPORT 8 CCR § 16431 -- AB limited 2008

LCP-AR1

6. LC § 1771.5 enforcement activities (provide all information requested, attaching as many sheets as necessary).

A. List projects handled by LCP within the past 12 months.

Project Name	Bid Advertisement Date	Prime Contractor	Contract Amount
Total			

B. Summary of all wages and penalties assessed and/or recovered.

Project Name	Affected Contractor (who directly employed the worker)	Amount Assessed	Amount Recovered	Approval of Forfeiture Requested from Labor Commissioner?	Description of Violation
				☐ Yes ☐ No	
				☐ Yes ☐ No	
				☐ Yes ☐ No	
				☐ Yes ☐ No	
				☐ Yes ☐ No	
				☐ Yes ☐ No	
				☐ Yes ☐ No	
				☐ Yes ☐ No	
Total					

LCP ANNUAL REPORT 8 CCR § 16431 – AB limited 2008

LCP-AR1

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

Project Name	Amount Assessed	Amount Recovered	Explanation
Total			

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

Project Name	Amount Assessed					Amount Recovered				
	LC §1776(g)	LC § 1775	LC § 1813	Wages	Total	LC § 1776(g)	LC § 1775	LC § 1813	Wages	Total
Total										

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

Project Name	Contractor	Nature of Violation	ODL Case #	Current Status

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

Please check one: ☐ Yes ☐ No

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

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

Please check one: ☐ Yes ☐ No

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

LCP ANNUAL REPORT 8 CCR § 16431 – AB limited 2008

Appendix L: LCP Checklist

Watershed Conservation Authority

Checklist of Labor Law Requirements

(CCR Title 8, Section 16421)

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

NAME (PRINT) _____ DATE _____

COMPANY _____ PHONE _____

ADDRESS _____ FAX _____

CITY _____ STATE _____ ZIP CODE _____

PROJECT MANAGER _____ SUPERINTENDENT/FOREMAN _____

CERTIFIED PAYROLL _____ PHONE/EXT. _____

CONTRACTOR LICENSE NO. _____ EXP. DATE _____ SPECIALTY LICENSE NO. _____

SELF-INSURED CERTIFICATE NO. _____ WORKERS COMP. POLICY NO. _____

PROJECT NAME _____ PROJECT #/BID PACKAGE# _____

AWARDING BODY _____ ADVERTISEMENT DATE _____

IF SUB-CONTRACTING, LIST YOUR PRIME/GENERAL CONTRACTOR _____

CONTRACT AWARD AMOUNT _____

☐ **Payment of Prevailing Wage Rates**

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

Labor Code Section 1770 et seq. The contractor is responsible for ascertaining and complying with all current general prevailing wage rates for crafts and any rate changes that occur during the life of the contract. Information on all prevailing wage rates and all rate changes are to be posted at the job site for all workers to view. Additionally, current wage rate information can be found at the DLSR web site, *www.dir.ca.gov/dlsr/statistics_research.html.*

☐ **Apprentices**

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

☐ **Penalties**

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

Checklist of Labor Law Requirements, continued

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

☐ **Certified Payroll Reports**
Under *Labor Code Section 1776*, contractors and subcontractors are required to keep accurate payroll records showing the name, address, social security number and work classification of each employee and owner performing work; also the straight time and overtime hours worked each day for each week, the fringe benefits, and, the actual per diem wage paid to each owner, journey person, apprentice worker or other employee hired in connection with the public works project. T his requirement includes and applies to all subcontractors performing work on Awarding Body projects even if their portion of the work is less than one half of one percent (0.05%) of the total amount of the contract. T he certified payroll records shall contain the same data fields listed on the *Public Works Payroll Reporting Form (A-1-131)* and contain or is accompanied by a declaration made under penalty of perjury. *(California Code of Regulations, Section 16401)*. Prime Contractors are responsible for submittal of their payrolls and those of their respective subcontractors as one package. Any payroll not submitted in the proper form will be rejected. In the event that there has been no work performed during a submitted. Employee payroll records shall be certified and shall be made available for inspection at all reasonable hours at the principal office of the contractor/subcontractor, or shall be furnished to any employee, or his/her authorized representative on request, pursuant to *Labor Code Section 1776*. Under *Labor Code Section 1776(g)* there are penalties required for contractor's/subcontractor's failure to maintain and submit copies of certified payroll records on request.

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

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

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

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

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

Watershed Conservation Authority

Checklist of Labor Law Requirements, continued

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

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

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

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

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

☐ **Itemized Wage Statement**
Labor Code Section 226 requires that employees be provided with itemized wage statements.

☐ **Proper Licensing of Electricians working under a C-10 License**
As a responsibility of the Agency it is our responsibility to insure contractors holding a C-10 license are aware with the *Labor Code Section 3099.2* requirements and are aware of the enforcement actions that can take place if the contractor fails to comply with said requirements:

> "Pursuant to the requirements of SB 1362 and California Labor Code section 3099.2, all employees performing electrical work for a subcontractor holding a C-10 license must be certified. If employees working on project are found to be not certified, they shall be immediately removed. Failure to provide proof of this documentation on all employees will be considered a violation and subject the subcontractor to corrective action up to and including being removed from the project."

CERTIFICATION

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

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

Contractor _____ _____
(SIGNATURE) (DATE)

Appendix M: DAS 140 Project Award Notification

PUBLIC WORKS CONTRACT AWARD INFORMATION

Contract award information must be sent to your Apprenticeship Committee if you are approved to train. If you are not approved to train, you must send the information (which may be this form) to ALL applicable Apprenticeship Committees in your craft or trade in the area of the site of the public work. Go to: http://www.dir.ca.gov/das/PublicWorksForms.htm for information about programs in your area and trade. You may also consult your local Division of Apprenticeship Standards (DAS) office whose telephone number may be found in your local directory under California, State of, Industrial Relations, Division of Apprenticeship Standards.

Do not send this form to the Division of Apprenticeship Standards.

NAME OF YOUR COMPANY	CONTRACTOR'S STATE LICENSE NO
MAILING ADDRESS- NUMBER & STREET, CITY, ZIP CODE	AREA CODE & TELEPHONE NO.
NAME & ADDRESS OF PUBLIC WORKS PROJECT	DATE YOUR CONTRACT EXECUTED
	DATE OF EXPECTED OR ACTUAL START OF PROJECT
NAME & ADDRESS OF PUBLIC AGENCY AWARDING CONTRACT	ESTIMATED NUMBER OF JOURNEYMEN HOURS
	OCCUPATION OF APPRENTICE
THIS FORM IS BEING SENT TO: (NAME & ADDRESS OF APPRENTICESHIP PROGRAM(S))	ESTIMATED NUMBER OF APPRENTICE HOURS
	APPROXIMATE DATES TO BE EMPLOYED

This is not a request for dispatch of apprentices.

Contractors must make a separate request for actual dispatch, in accordance with Section 230.1(a) California Code of Regulations

Check One Of The Boxes Below

1. ☐ We are already approved to train apprentices by the _____ Apprenticeship Committee. We will employ and train under their Standards. Enter name of the Committee

2. ☐ We will comply with the standards of _____ Apprenticeship Committee for the duration of this job only. Enter name of the Committee

3. ☐ We will employ and train apprentices in accordance with the California Apprenticeship Council regulations, including § 230.1 (c) which requires that apprentices employed on public projects can only be assigned to perform work of the craft or trade to which the apprentice is registered and that the apprentices must at all times work with or under the direct supervision of journeyman/men.

Signature _____ *Date* _____

Typed Name _____

Title _____

State of California - Department of Industrial Relations DIVISION OF APPRENTICESHIP STANDARDS

DAS 140 (REV. 1/04)

Appendix N: DAS 142 Request for Apprentices

REQUEST FOR DISPATCH OF AN APPRENTICE

Do not send this form to DAS

You may use this form to request dispatch of an apprentice from the Apprenticeship Committee in the craft or trade in the area of the public work. Go to: http://www.dir.ca.gov/das/PublicWorksForms.htm for information about programs in your area and trade. You may also consult your local Division of Apprenticeship Standards (DAS) office whose telephone number may be found in your local directory under California, State of, Industrial Relations, Division of Apprenticeship Standards.

Date: _____

To Applicable Apprenticeship Committee: _____

Address: _____

Telephone: _____ Fax: _____

Contractor Requesting Dispatch: _____

Address: _____

Telephone: _____ Fax: _____

Person making request: _____

Number of Apprentice(s) Needed _____ Craft or Trade_____

Date Apprentice(s) to Report: _____ (48 hours notice required)

Name of Person to Report to: _____

Address to Report to: _____

Time to Report: _____

You may use this form, or make a verbal or written request, to ask for the dispatch of an apprentice. Please take note of California Code of Regulations, *Title 8, § 230.1 (a)* which says in part: *if in response to a written request an Apprenticeship Committee does not dispatch any apprentice to a contractor who has agreed to employ and train apprentices in accordance with either the Apprenticeship Committee's Standards or these regulations within 72 hours of such request (excluding Saturdays, Sundays and holidays) the contractor shall not be considered in violation of this section as a result of failure to employ apprentices ...*

DAS142 (Rev. 9-03)

Appendix O: Fringe Benefit Statement

FRINGE BENEFIT STATEMENT

Contract No.:	Project Name:	Date:
INSTRUCTIONS: This form is to be submitted with the first certified payroll. In order that the Fringe Benefit rates can be used for checking payrolls or applied to Force Account work which may be done on the above contract the hourly rates for fringe benefits, subsistence and/or travel allowance payment (as required by collective bargaining agreements) made for employees on the various classes of work are tabulated below. THIS DOCUMENT CONTAINS PERSONAL INFORMATION AND PURSUANT TO CIVIL CODE 1796.21, IT SHALL BE KEPT CONFIDENTIAL IN ORDER TO PROTECT AGAINST UNAUTHORIZED DISCLOSURE.		
Classification:	Effective Date:	Subsistence or Travel Pay:
Health and Welfare $	Trust Fund Paid To: (Name)	
	Address:	
Pension $	Trust Fund Paid To: (Name)	
	Address:	
Vacation/Holiday $	Trust Fund Paid To: (Name)	
	Address:	
Training and/or Other $	Trust Fund Paid To: (Name)	
	Address:	
Classification:	Effective Date:	Subsistence or Travel Pay:
Health and Welfare $	Trust Fund Paid To: (Name)	
	Address:	
Pension $	Trust Fund Paid To: (Name)	
	Address:	
Vacation/Holiday $	Trust Fund Paid To: (Name)	
	Address:	
Training and/or Other $	Trust Fund Paid To: (Name)	
	Address:	
Classification:	Effective Date:	Subsistence or Travel Pay:
Health and Welfare $	Trust Fund Paid To: (Name)	
	Address:	
Pension $	Trust Fund Paid To: (Name)	
	Address:	
Vacation/Holiday $	Trust Fund Paid To: (Name)	
	Address:	
Training and/or Other $	Trust Fund Paid To: (Name)	
	Address:	

Supplemental statement must be submitted during the progress of work should a change in rate of any of the classifications be made. I CERTIFY THAT THE FRINGE BENEFIT PAYMENTS ARE MADE TO THE APPROVED PLANS, FUNDS OR PROGRAMS AS LISTED ABOVE.

Submitted (Contractor/Subcontractor)	By (Name and Title)	Signature

Appendix P: Certified Payroll Report

CERTIFIED PAYROLL

NAME OF CONTRACTOR/SUBCONTRACTOR	ADDRESS	CONTRACTOR'S LICENSE #/SPECIALTY LICENSE # WORKERS COMPENSATION POLICY #

PAYROLL NO.	FOR WEEK ENDING	PROJECT NAME AND LOCATION	CONTRACT NO.

(1) NAME, ADDRESS, AND SOCIAL SECURITY NUMBER OF EMPLOYEE	(2) No. of W/H Exmptn	(3) Work Classification	OT or ST	(4) Day and Date / Hours Worked Daily							(5) Hour Total	(6) Pay Rate	(7) Gross Amount Earned										
													This Project	All Projects	Federal Tax	FICA	State Tax	SDI	VAC	Other	Total Deduction	(8) Net Wages Paid for Week	Check No.
			OT																				
			ST																				
			OT																				
			ST																				
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Appendix Q: Statement of Compliance

STATEMENT OF COMPLIANCE

Date

I, _____ do hereby certify under penalty of perjury:
(Name of signatory party) (Title)

(1) That all the information in this report is true and correct;
(2) That I pay or supervise the payment of the persons reported as employed by _____ on the _____, that during the payroll period commencing on the _____ day of
(Project)
20 ____ and ending the _____ day of _____, 20 _____, all persons employed on said project have been paid their full weekly wages earned, that no rebates have or will be made either directly or indirectly to or on behalf of said _____ from the full weekly wages earned by any person and that no deductions have been
(Contractor or Subcontractor)
made either directly or indirectly from the full wages earned by any person, other than permissible deductions, as described below:

(3) That any payrolls otherwise under this contract required to be submitted for the above period are correct and complete; that the wage rates for laborers or mechanics contained therein are not less than the applicable wages contained in any wage determination incorporated into the contract; that the classifications set forth therein for each laborer or mechanic conform with the work he or she performed.
(4) That any apprentices employed in the above period are duly registered in a bona fide apprenticeship program registered with a State apprenticeship agency.

(5) That :
(a) WHERE FRINGE BENEFITS ARE PAID TO APPROVED PLANS, FUNDS OR PROGRAMS
_____ In addition to the basic hourly wage rates paid to each laborer or mechanic listed in the above referenced payroll, payment of fringe benefits as listed in the contract have been or will be made to appropriate programs for the benefit of such employees, except as noted in Section 5 (c) below.

(b) WHERE FRINGE BENEFITS ARE PAID IN CASH
_____ Each laborer or mechanic listed in the above referenced payroll has been paid as indicated on the payroll, an amount not less than the sum of the applicable basic hourly wage rate plus the amount of the required fringe benefits as listed in the contract except as noted in Section 5 (c) below:

(c) EXCEPTIONS

EXCEPTION (CRAFT)	EXPLANATION
Remarks:	
Name and Title	Signature

On federally-funded projects, permissible deductions are defined in Regulations, Part 3 (29 CFR Subtitle A), issued by the Secretary of Labor under the Copeland Act, as amended (48 Stat. 948; 63 Stat. 108; 72 Stat. 967; 76 Stat. 357; 40 U.S. C. 276c). The willful falsification of any of the above statements may subject the contractor or subcontractor to civil or criminal prosecution (Section 1001 of Title 118 and Section 231 of Title 31 of the United States Code.)

Appendix R: Non-Performance Statement

STATEMENT OF NON-PERFORMANCE

Payroll Number: _____

I, _____, _____ do hereby state that
(Name of Signatory party) (Title)

NO PERSONS employed by _____ performed work on
(Name of submitting company)

the construction project known as _____

for the payroll period commencing on the _____ day of _____, 20___
(1st date of week) (Month)

and ending on the _____ day of _____, 20___.
(Last date of week) (Month)

_____
Signature of Authorized Person

_____
Date

*THIS STATEMENT IS NOT REQUIRED TO BE SUBMITTED UNTIL AFTER SUBMISSION OF THE INITIAL PAYROLL REPORT

Appendix S: CAC 2 Form

State of California
Department of Industrial Relations
California Apprenticehip Council
P. O. Box 420603
San Francisco, CA 94142

TRAINING FUND CONTRIBUTIONS

Please use a separate ***form*** for each jobsite, listing the occupations for the jobsite. One ***check*** payable to the California Apprenticeship Council, may be submitted for all jobsites and/or occupations. Training fund contributions are ***not accepted*** by the California Apprenticeship Council for federal public works projects, or for non-apprenticeable occupations such as utility technicians, teamsters, etc.

California Apprenticeship Council

NAME AND ADDRESS OF CONTRACTOR/SUBCONTRACTOR MAKING CONTRIBUTION	CONTRACTOR'S LICENSE NMBER
	CONTRACT OR PROJECT NUMBER
NAME AND ADDRESS OF PUBLIC AGENCY AWARDING CONTRACT	JOBSITE LOCATION (INCLUDE COUNTY) IF APPLICABLE. GIVE NAME OF SCHOOL, HOSPITAL, BUILDING. ETC.
	PERIOD COVERED BY CONTRIBUTION (FROM-TO)

CLASSIFICATIONS) OF WORKERS (CARPENTER, PLUMBER, ELECTRICIAN, ETC.)	COUNTY WORK PERFORMED IN	HOURS	CONTRIBUTION RATE PER HOUR	AMOUNT

SIGNATURE PLEASE TYPE OR PRINT YOUR NAME	DATE
TITLE	AREA CODE & TELEPHONE NUMBER

CAC 2 (rev. 7/01) Hqtrs. TRAINING FUND CONTRIBUTIONS