

CONSULTANT GUIDELINES

for

Prevailing Wage and Labor Compliance

on

**Architectural and Engineering
(A&E) Contracts**



**THE CALIFORNIA
DEPARTMENT OF TRANSPORTATION**

Introduction

The California Department of Transportation (referred to in this publication as “Department”) is charged with the enforcement of federal and state labor laws relative to employment on the construction of public works. Prior to January 1, 2001, that essentially meant work performed in the “...construction, alteration, demolition, installation, or repair...” of a public work. The enactment of SB 1999 (Attachment 1) altered the State’s definition of construction to include “...work performed during the design and preconstruction phases...” and specifically “...but not limited to, inspection and land surveying work...”

Initial implementation followed when the Director of the Department of Industrial Relations (DIR) issued an “Important Notice To Awarding Bodies and Other Interested Parties Concerning Inspection, Field Surveying and Soils Testing” on December 29, 2000. That announcement (Attachment 2) provided the Department with classifications and prevailing wage rates for inspection and soils and materials testing work. Therefore, when such work is performed on a public works project, prevailing wages are required.

Recognizing that these requirements had heretofore not been part of the contractual or legal requirements on most Architectural and Engineering (A & E) consultant contracts, the Department is providing these guidelines to assist consultants (contractors with prime contracts with the Department) and subconsultants (subcontractors to consultants with Department contracts) to effectively achieve prevailing wage compliance. These guidelines neither supplant nor take precedent over the Labor Code or California Code of Regulations. Some Labor Code (LC) and California Code of Regulations (CCRs) language is directly included in these guidelines; however, citations to the statutory and regulatory authority as well as appropriate web site addresses are provided to facilitate further reference and understanding.

Guidelines are provided in the following labor compliance areas:

- Prevailing Wages
- Wage Determinations
- Certified Payrolls
- Apprentices and Trainees
- Subcontracting
- Adjudication of Violations and Sanctions

Prevailing Wages

Consultants:

- Shall pay prevailing wages to those workers employed on Department public works contracts performing applicable duties. (LC Sections 1771 and 1774)

The general prevailing rate of per diem wages is set by the Director of DIR and includes the basic hourly rate, employer payments, and the rates for Saturday, Sunday, holidays and overtime. Employer payments are those for health and welfare, pension, vacation, travel, subsistence, and apprenticeship or other training programs. The basic hourly and employer payments yield the total hourly rate. Information further detailing prevailing wages and how the rates are set can be found in Sections 1773, 1773.1 and 1773.9 of the Labor Code.

Current prevailing wage rates can be found in “General Prevailing Wage Determinations made by the Director of Industrial Relations” (wage determinations) at the Division of Labor Statistics and Research, Prevailing Wage Unit, P. O. Box 420603, San Francisco, CA 94142, (415) 703-4774, or at DIRs website at http://www.dir.ca.gov/DLSR/statistics_research.html

- Are subject to penalties of up to \$50 per day per worker for failure to pay prevailing wages to their employees working on Department public works contracts. (LC Section 1775), and up to \$25 per day per worker for failure to pay overtime for work over 8 hours in a calendar day or 40 hours in a calendar week. (LC Section 1813)
- Are to permit authorized Department staff to interview or survey consultant workers employed on the Department’s projects. (LC Sections 1726 and 1771.5, and CCR Section 16428(a)(1), inferred)

Wage Determinations

Consultants:

- Are to obtain applicable wage determinations on which to base the rates of pay for their employees on public works projects.(CCR 16204, inferred Contract)
- Shall post or permit posting of wage determinations by Caltrans staff at the job-site. (LC Section 1773.2)
- May request that the Director of DIR review the determination of any rate associated with an upcoming contract, if they believe that it was not determined in accordance with LC Section 1773. Such requests must be within 20 days of the commencement of advertisement. (LC Section 1773.4)

- May be afforded the opportunity to provide data to the Director of DIR should they decide that the collective bargaining agreement (CBA) or federal rates are not the actual prevailing rates in that locality. (LC Section 1773)
 1. The Director of DIR has the sole authority for determining the general prevailing rate of per diem wages in accordance with LC Section 1773.
 2. The Director of DIR may adopt as the wage determination the rate established in a CBA. (LC Section 1773)

Certified Payrolls

Consultants are required to submit certified payroll records (CPRs) to the Department.

- Payroll records shall show the name, address, social security number, work classification, straight time and overtime hours worked each day and each week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in connection with the public work. (LC Section 1776)
- Certified payroll records shall be on forms provided by the Division of Labor Standards Enforcement (Attachment 3) or must contain the same information as on those forms as approved by the Contract Manager. (LC Section 1776)
- Appropriate payroll forms may be found on the DIR website at <http://www.dir.ca.gov/scripts/samples/search/N/query.idq?CiRestriction=Form+A-1-131&CiScope=%2F&CiMaxRecordsPerPage=10&CiSort=rank%5Bd%5D&HTMLQueryForm=query.htm>
- The Statement of Compliance must accompany the CPRs (Attachment 4). (LC Section 1776)
- A fringe benefit statement (Attachment 5) must be submitted with the CPRs. Fringe benefit statements must include the hourly amount and the third party trust to whom it was paid. (LC 1776, inferred)
- A copy of the CPRs is to be submitted weekly to the Contract Manager. (LC Section 1776(b)(2)) If by the 15th of the month, the Consultant has not submitted satisfactory payrolls for all work performed during the monthly period ending on or before the 1st of that month, the Department will retain an amount equal to 10 percent of the estimated value of the work performed (exclusive of Mobilization) during the month from the next monthly estimate, except that this retention shall not exceed \$10,000 nor be less than \$1000
- Supplemental CPRs containing any corrections are to be submitted when so directed by authorized representatives of the Department. (LC Section 1776(b)(2))
- Any payroll documentation is to be provided to the Contract Manager, Labor Compliance Officer or other authorized representative of the Department within 10 days of receipt of a written request. (LC Section 1776(g))
 1. Failure to submit timely CPRs subjects consultants and subconsultants to penalties of \$25 per day per employee until the CPRs are submitted. (LC Section 1776(g))

- Certified payroll records are to be kept for up to three years after contract completion. (Contract)

Apprentices and Trainees

Consultants are:

- To employ workers as apprentices only from a California Division of Apprenticeship Standards (DAS) approved apprenticeship program. (LC Section 1777.5)
- To employ apprentices within the applicable ratios. (LC Section 1777.5)
- Not to employ workers as trainees unless a wage determination exists for such classification. (Contract)

Subcontracting

Consultants and subconsultants shall be jointly and severally liable for the payment of prevailing wages and any amounts due pursuant to a final order. (LC Section 1743)

Consultants have responsibility for their subconsultants and subcontracts to:

- Include applicable language in and require prevailing wages as appropriate on all subcontracts. (LC Sections 1743, 1774 and 1775(b)(1))
- Monitor the payment of prevailing wages by subconsultants on the Department's public works contracts by periodic review of subconsultants' CPRs. (LC Section 1775(b)(2))
- Take corrective action upon becoming aware that subconsultants are failing to pay prevailing wages. Corrective action includes retaining funds from subconsultants. (LC Sections 1729 and 1775(b)(3))
- Obtain an affidavit signed by the subconsultant under penalty of perjury that he or she paid prevailing wages to their employees and paid any penalties due for failure to pay overtime to employees caused or permitted to work excess hours. (LC Section 1775(b)(4))
- Monitor subconsultants' use of apprentices. (LC Section 1777.7)

Adjudication of Violations, Penalties, Liquidated Damages and Debarment

Should the Department through its authorized representatives pursue wage violations, withholds, penalties, liquidated damages or debarment, the consultant or subconsultant is subject to the actions described below.

- If the Department needs to pursue a violation, it requests formal case approval from the Division of Labor Standards Enforcement (DLSE) at DIR. Prior to a formal wage case, the

Department will attempt to obtain essential information and gain compliance with the payment of prevailing wages or other labor requirements. However, once DLSE approves a wage violation case, it sets in motion the enforcement of prevailing wages and the formal administrative hearing procedures.

- Consultants will receive a Notice Of Withholding Of Contract Payments (Notice) from the Department notifying them of a formal withhold of contract payments in an amount necessary to satisfy any unpaid wages, penalties and potential liquidated damages. The following administrative procedures and remedies are available to the consultant:
 1. Request a settlement meeting with the district or region Labor Compliance Officer within 30 days of the service of the Notice. This is an informal meeting either in person or by telephone to resolve or clarify the situation. Nothing from this meeting may be later used at hearing. (CCR Section 17221)
 2. Submit a Request for Review with the Department within 60 days of the service of the Notice if an appeal of the action is intended. The consultant may also send a copy to DIR; however, the Department is obligated to transmit that request to DIR. This starts the administrative hearing process. DIR assigns a hearing officer who then directs subsequent administrative actions. (LC Section 1742(a) and CCR Section 17222)
 3. Review the Department's evidence of the violation by requesting to do so in writing. (CCR Section 17224)
 4. Request judicial review should the consultant be found liable in DIR's decision. (LC Section 1742(c) and CCR Section 17262)
- Penalties are assessed for failing to pay prevailing wages, submit CPRs or submit adequate CPRs. (LC Sections 1775 and 1776(g)) Unlike withholds or retentions, penalties once assessed are not necessarily recoverable if restitution is made later.
- Consultants are liable for liquidated damages unless he or she can demonstrate to the Director of DIR that he or she had "substantial grounds for believing the Notice to be in error." The liquidated damages are due if restitution for unpaid or underpaid wages hasn't been made after 60 days from the service of Notice. The amount is equal to the unpaid or underpaid wages and is collected and disbursed to the workers. (LC Section 1742.1)
- If the Labor Commissioner determines that the consultant willfully or with intent to defraud violated Chapter 1, Public Works, of the Labor Code, the consultant may be ruled ineligible to bid on, be awarded or perform work as a subconsultant on public works projects for between 1 and 3 years. This "debarment" prohibits consultants from bidding on all public works projects advertised and awarded by state departments, cities, counties, special districts, and all other public entities within the State of California. (LC Section 1777.1)

These actions are spelled out in detail in LC Sections 1741, 1742 & 1771.6(b) and CCR, Title 8, Sections 17220 through 17263.

Additional References and Miscellaneous Information

The Labor Code and the California Code of Regulations contain the statutory and regulatory authority for enforcing prevailing wage requirements. Specifically, the Department's Labor Compliance Program is governed by Labor Code Sections 1720 through 1815 and 2750.5, and California Code of Regulations Title 8, Chapter 8, Sections 16000 through 16802 and 17201 through 17270. Caltrans does not have authority or responsibility for enforcing other sections of the Labor Code.

The Labor Code can be found at the website <http://www.leginfo.ca.gov/calaw.html>

The CCR Title 8, Division 1, Chapter 8, Subchapter 3, Article 1, Sections 16000 through 17270, can be found at the website <http://ccr.oal.ca.gov>

Acronyms

A & E	Architectural and Engineering
BCI	Building Construction Inspector, work classification
CBA	Collective Bargaining Agreement
CCR	California Code of Regulations
CM	Contract Manager
CPR	Certified Payroll Record
CSU	Contract Services Unit, Caltrans
DAS	Division of Apprenticeship Standards, DIR
Department	California Department of Transportation
DIR	Department of Industrial Relations
DLSE	Division of Labor Standards Enforcement, DIR
FSMT	Field Soils and Materials Tester, work classification
LC	Labor Code

Additional relevant definitions may be found in Labor Code Sections 1720 through 1725 and in California Code of Regulations Section 17202.

ATTACHMENT 1

BILL NUMBER: SB 1999 CHAPTERED
BILL TEXT

CHAPTER 881
FILED WITH SECRETARY OF STATE SEPTEMBER 29, 2000
APPROVED BY GOVERNOR SEPTEMBER 28, 2000
PASSED THE SENATE AUGUST 30, 2000
PASSED THE ASSEMBLY AUGUST 28, 2000
AMENDED IN ASSEMBLY AUGUST 23, 2000
AMENDED IN ASSEMBLY AUGUST 18, 2000
AMENDED IN ASSEMBLY AUGUST 7, 2000
AMENDED IN SENATE APRIL 24, 2000

INTRODUCED BY Senator Burton

FEBRUARY 25, 2000

An act to amend Section 1720 of the Labor Code, relating to public contracts.

LEGISLATIVE COUNSEL'S DIGEST

SB 1999, Burton. Public works.

Existing law defines public works and establishes certain requirements that must be met by persons who enter into contracts for public works. Those requirements include provisions generally known as the prevailing wage laws. The prevailing wage laws require that all workers employed on public works be paid the general prevailing rate of per diem wages, as determined by the Director of Industrial Relations.

This bill would revise the definition of public works by providing that "construction" includes work performed during the design and preconstruction phases of construction including, but not limited to, inspection and land surveying work. By requiring local government entities to comply with the provisions affecting public works, including the prevailing wage laws, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 1720 of the Labor Code is amended to read:

1720. As used in this chapter, "public works" means:

(a) Construction, alteration, demolition, or repair work done under contract and paid for in whole or in part out of public funds, except work done directly by any public utility company pursuant to order of the Public Utilities Commission or other public authority. For purposes of this subdivision, "construction" includes work performed during the design and preconstruction phases of construction including, but not limited to, inspection and land surveying work.

(b) Work done for irrigation, utility, reclamation, and improvement districts, and other districts of this type. "Public work" shall not include the operation of the irrigation or drainage system of any irrigation or reclamation district, except as used in Section 1778 relating to retaining wages.

(c) Street, sewer, or other improvement work done under the direction and supervision or by the authority of any officer or public body of the state, or of any political subdivision or district thereof, whether the political subdivision or district operates under a freeholder's charter or not.

(d) The laying of carpet done under a building lease-maintenance contract and paid for out of public funds.

(e) The laying of carpet in a public building done under contract and paid for in whole or part out of public funds.

(f) Public transportation demonstration projects authorized pursuant to Section 143 of the Streets and Highways Code.

SECTION 2. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

STATE OF CALIFORNIA
 DEPARTMENT OF INDUSTRIAL RELATIONS
 OFFICE OF THE DIRECTOR
 435 Golden Gate Avenue, 10th Floor
 San Francisco, CA 94102

GRAY DAVIS, GOVERNOR

ADDRESS REPLY TO:
 P.O. Box 420603
 CA 94142-0603



December 29, 2000

**IMPORTANT NOTICE TO AWARDING BODIES AND OTHER INTERESTED PARTIES
 CONCERNING INSPECTION, FIELD SURVEYING AND SOILS TESTING**

The passage of Senate Bill 1999 (Chapter 881), effective January 1, 2001, codifies existing Department of Industrial Relations administrative decisions, determinations and regulations concerning the above referenced work. This work when done on or in the execution of a "Public Works" project requires the payment of prevailing wages. In accordance with SB 1999, Inspection and Testing determinations will be strictly enforced for all public works projects advertised for bids on or after January 1, 2001. Field surveying determinations have been and will continue to be enforced for all public works projects.

The classifications that perform this work have been published in the Director's General Prevailing Wage Determinations for over 20 years and can be found on the Basic Trades pages (Building Inspection, Soils Testing) and on the individual county sheets (Field Surveying). For the basic trades, please use the following determinations:

SOUTHERN CALIFORNIA

OPERATING ENGINEER, Group 2 (Soils Field Technician), page 7
BUILDING CONSTRUCTION INSPECTOR (OPERATING ENGINEER), page 10E

SAN DIEGO COUNTY

OPERATING ENGINEER, Group 2 (Soils Field Technician), page 25
BUILDING CONSTRUCTION INSPECTOR (OPERATING ENGINEER), page 10E

NORTHERN CALIFORNIA

OPERATING ENGINEER (Heavy and Highway Work): Group 6 (Soils and Materials Tester), page 39
OPERATING ENGINEER (Building Construction): Group 6 (Soils and Materials Tester), page 40A

Advisory scope of work covered by each of these classifications has been posted on the Internet at <http://www.dir.ca.gov/DLSR/PWD>. This information may also be requested from the Division of Labor Statistics and Research, Prevailing Wage Unit by calling (415) 703-4774, by faxing a request to (415) 703-4771 or by writing to:

California Department of Industrial Relations
 Division of Labor Statistics and Research
 Prevailing Wage Unit
 P.O. Box 420603
 San Francisco, CA 94142

In addition, Director's precedential Public Works coverage determinations concerning inspection and testing work will be enforced for all public works projects advertised for bids on or after the dates the precedential decisions were designated as such. For determinations of the applicability of prevailing wage requirements to other work covered by SB 1999, please contact the Division either via fax number or by mailing your request to the address indicated above. Requests of this nature should include all of the relevant documents including, but not limited to, the contract for the work and a detailed description of the work to be performed. Future clarifications regarding the scope and application of Senate Bill 1999, if needed, will be posted on the DLSR website and mailed to those on the Prevailing Wage mailing list.

NOTICE TO PUBLIC ENTITY

For Privacy Considerations

Fold back along dotted line prior to copying for release to general public (private persons).

(Paper Size then 8-1/2 x 11 inches)

I, _____, the undersigned, am the
(Name - print)

_____ with the authority to act for and on behalf of
(Position in business)

_____, certify under penalty of perjury
(Name of business and/or contractor)

that the records or copies thereof submitted and consisting of _____
(Description, number of pages)

are the originals or true, full, and correct copies of the originals which depict the payroll record(s)
of the actual disbursements by way of cash, check, or whatever form to the individual or
individuals named.

Date: _____

Signature: _____

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

CONTRACTOR/SUBCONTRACTOR (Please Print)	CONTRACT NUMBER	FEDERAL AID PROJECT NUMBER	DATE
TO: RESIDENT ENGINEER/DISTRICT LABOR COMPLIANCE OFFICER		BUSINESS ADDRESS	

The following information (as shown or referenced on wage rate determinations) paid to or on behalf of employees in various crafts or classifications is used to check payrolls or applied to force account work on the above contract.

THIS FORM MUST BE COMPLETED AND SUBMITTED WITH THE FIRST CERTIFIED PAYROLL, OR WHEN THERE HAVE BEEN ANY CHANGES.

CLASSIFICATION	FRINGE BENEFIT HOURLY AMOUNT	NAME AND ADDRESS OF PLAN, FUND, OR PROGRAM
Effective Date _____ _____ Subsistence and/or Travel Pay: \$ _____	Vacation \$ _____ Health & Welfare \$ _____ Pension \$ _____ Apprentice/ Training \$ _____ Other \$ _____	_____ _____ _____ _____
Effective Date _____ _____ Subsistence and/or Travel Pay: \$ _____	Vacation \$ _____ Health & Welfare \$ _____ Pension \$ _____ Apprentice/ Training \$ _____ Other \$ _____	_____ _____ _____ _____
Effective Date _____ _____ Subsistence and/or Travel Pay: \$ _____	Vacation \$ _____ Health & Welfare \$ _____ Pension \$ _____ Apprentice/ Training \$ _____ Other \$ _____	_____ _____ _____ _____

I certify under penalty of perjury that fringe benefits are paid to the approved Plans, Funds, or Programs as listed above.

NAME AND TITLE (Please Print)	
SIGNATURE	BUSINESS TELEPHONE NUMBER