

April 4, 2008

*REVISIONS TO PROPOSED AMENDMENTS
TO REGULATIONS RELATING TO*

**CERTIFIED PAYROLL RECORDS and
LABOR COMPLIANCE PROGRAMS**

CALIFORNIA CODE OF REGULATIONS

TITLE 8, CHAPTER 8, SUBCHAPTER 3, Article 6,
and SUBCHAPTER 4

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Subchapter 3. Payment of Prevailing Wages upon Public Works

Article 6. Certified Payroll Records: Requests, Content, and Cost

§§ 16400 – 16403 [No change]

§ 16404. Use of Electronic Reporting Forms.

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

(a) The reports must contain all of the information required by Labor Code Section 1776, with the information organized in a manner that is similar or identical to how the information is reported on the Department of Industrial Relations’ 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, Labor Compliance Programs, and the Department of Industrial Relations;

(c) Reports submitted to an awarding body, a Labor Compliance Program, the Division of Labor Standards Enforcement, or other entity within the Department of Industrial Relations 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 Labor Code Section 1776(e), whether the records are provided electronically or as hard copies; and

(e) No ~~party~~**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 ~~party con-~~**tractor or subcontractor** be required to purchase or use proprietary software that is not gen-

erally available to the public.

NOTE: Authority cited: Sections 54, 55, 1773.5, and 1776, Labor Code. Reference: Section 1776, Labor Code.

Subchapter 4. Awarding Body Labor Compliance Programs

Article 1. Operation of Labor Compliance Program and Contracts Subject to Labor Compliance Program Jurisdiction

§16421. Composition and Components of Labor Compliance Program.

(a) In accordance with Labor Code Section 1771.5(b), a Labor Compliance Program shall include, but not be limited to, the following requirements:

(1) The Call for Bids, Design-Build Request, and the contract or purchase order shall contain appropriate language concerning the requirements of Chapter 1 of Part 7 of Division 2 of the Labor Code.

(2) A prejob conference shall be conducted before commencement of the work with contractors and subcontractors listed in the bid or who are required to be identified or prequalified in a Design-Build Contract. At the prejob conference applicable federal and state labor law requirements shall be discussed, and copies of suggested reporting forms furnished. A checklist, showing which federal and state labor law requirements were discussed, shall be kept for each conference. A checklist in the format of Appendix A presumptively meets this requirement.

(3) A requirement that certified payroll records be kept by the contractor in accordance with Labor Code Section 1776 and furnished to the Awarding Body Labor Compliance Program at times designated in the contract, which shall be at least monthly, or within 10 days of any request by the Awarding Body. Use of the current version of DIR's "Public Works Payroll Reporting Form" (A-1-131) and Statement of Employer Payments (PW26) constitutes ~~full~~ presumptive compliance with this requirement for certified payroll records kept in accor-

dance with by the Awarding Body Labor Code Section 1776, provided the forms are filled out accurately and completely. These suggested forms are available from the Department of Industrial Relations.

(4) A program for orderly review of payroll records and, if necessary, for audits to verify compliance with the requirements of Chapter 1 of Part 7 of Division 2 of the Labor Code.

(5) A prescribed routine for withholding penalties, forfeitures, and underpayment of wages for violations of the requirements of Chapter 1 of Part 7 of Division 2 of the Labor Code.

(6) All contracts to which prevailing wage requirements apply shall include a provision that contract payments shall not be made when payroll records are delinquent or inadequate.

(b) To the extent otherwise authorized by law, an Awarding Body or a Joint Powers Authority consisting of two or more Awarding Bodies may contract with a third party to initiate and enforce all or part of its Labor Compliance Program, *provided that* the third party has been approved by the Director to operate a Labor Compliance Program in accordance with these regulations. However, this subpart shall not be construed as limiting an Awarding Body's or Joint Powers Authority's authority to contract for services for the operation of its own approved Labor Compliance Program, including services by persons licensed or certified by the State of California to practice one of the following recognized professions: law, architecture, engineering, or accounting.

(c) A private entity that is approved by the Director to operate a Labor Compliance Program and that operates a Labor Compliance Program pursuant to a contract with an Awarding Body or a Joint Powers Authority shall have the same rights and responsibilities as the Awarding Body or Joint Powers Authority in administering the Labor Compliance Program, including but not limited to (1) complying with the conflict of interest provisions of the Political Reform Act (commencing with Section 87100 of the Government Code) including disclosure requirements for Labor Compliance Program employees and consultants who participate in making government decisions, as defined under Title 2 California Code of Regulations Section 18701, and (2) maintaining, disclosing, or keeping confidential personnel in-

formation, payroll records, and other information and records in accordance with Labor Code Section 1776, the California Public Records Act, (Chapter 3.5 (commencing with Section 6250), Division 7, Title 1, Government Code) and the Information Practices Act of 1977, (Title 1.8 (commencing with Section 1798), Part 4, Division 3, Civil Code).

(d) Nothing in this section or these regulations shall be construed as limiting the responsibility and authority of an Awarding Body to take cognizance of prevailing wage violations under Section 1726 of the Labor Code and take any appropriate action pursuant to and in accordance with that responsibility and authority.

(e) It is the responsibility of a Labor Compliance Program to enforce prevailing wage requirements, consistent with the policy of the state as expressed in Labor Code Section 90.5(a). A Labor Compliance Program shall take reasonable, vigorous, and prompt action to (1) determine whether violations exist, and (2) enforce compliance, including through imposition of appropriate penalties and formal enforcement action, when violations are found. A Labor Compliance Program shall neither avoid 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.

(f) The failure of an Awarding Body or Labor Compliance Program to comply with any requirement imposed by this subchapter shall not of itself constitute a defense to the failure to pay prevailing wages or to comply with any other obligation imposed by Chapter 1 (commencing with Section 1720), Part 7, Division 1 of the Labor Code.

NOTE: Authority cited: Section 1773.5, Labor Code. Reference: Sections 1798 – 1798.78, Civil Code; Sections 6250 – 6276.48, 6500 - 6533 and 87100 - 87500, Government Code; Sections 90.5, 1720 et seq., 1726, 1771.5(b), 1771.7, 1771.8, 1771.9, and 1776, Labor Code.

Appendix A

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Suggested Checklist of Labor Law Requirements to Review at Prejob Conference, Section 16421, with suggested Certification by subcontractor.

The federal and state labor law requirements applicable to the contract are composed of but not limited to the following items:

- (1) The contractor's duty to pay prevailing wages under Labor Code Section 1770 et seq., should the project exceed the exemption amounts;
- (2) The contractor's duty to employ registered apprentices on the public works project under Labor Code Section 1777.5;
- (3) The penalties for failure to pay prevailing wages (for non-exempt projects) and employ apprentices including forfeitures and debarment under Labor Code Sections 1775 and 1777.7;
- (4) The requirement to keep and submit copies upon request of certified payroll records under Labor Code Section 1776, and penalties for failure to do so under Labor Code Section 1776(g);
- (5) The prohibition against employment discrimination under Labor Code Section 1777.6; the Government Code, and Title VII of the Civil Rights Act of 1964;
- (6) The prohibition against accepting or extracting kickback from employee wages under Labor Code Section 1778;
- (7) The prohibition against accepting fees for registering any person for public work under Labor Code Section 1779; or for filling work orders on public works under Labor Code Section 1780;
- (8) The requirement to list all subcontractors under Public Contracts Code Section 4104;
- (9) The requirement to be properly licensed and to require all subcontractors to be properly licensed and the penalty for employing workers while unlicensed under Labor Code Section 1021 and under the California Contractors License Law, found at Business and Professions Code Section 7000 et seq;
- (10) The prohibition against unfair competition under Business and Professions Code Sec-

tions 17200-17208;

(11) The requirement that the contractor be properly insured for Workers Compensation under Labor Code Section 1861;

(12) The requirement that the contractor abide by the Occupational, Safety and Health laws and regulations that apply to the particular construction project;

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

(14) The requirement to provide itemized wage statements to employees under Labor Code Section 226.

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 [name of subcontractor].

Date

Name of person signing and company

§16422. Applicable Dates for Enforcement of ~~Awarding Body~~ Labor Compliance Programs.

(a) No contracts shall be subject to Labor Compliance Program jurisdiction nor shall the limited exemption from payment of prevailing wages pursuant to Labor Code Section 1771.5(a) apply to any contract of an Awarding Body unless and until the Labor Compliance Program has been approved by the Director pursuant to this subchapter.

(b) Contracts for which the Date of Notice or the Call for Bids is subsequent to the date of ~~initial or final~~ approval of a Labor Compliance Program are subject to Labor Code Section 1771.5. In the case of a contract for which there is no Call for Bids, the applicable date shall be the date of the award of the contract.

(c) Revocation of approval of a Labor Compliance Program by the Director shall not affect

the limited exemption from payment of prevailing wages provided by Labor Code Section 1771.5(a) if the date of such revocation is subsequent to the Date of Notice or Call for Bids or, in the case of a contract for which there is no Call for Bids, subsequent to the date of the award of the contract.

(d) If the Director revokes approval of an awarding body's Labor Compliance Program that was approved pursuant to ~~8 C.C.R.~~ section 16425 **below**, the Director shall give notice to the Awarding Body specifying enforcement responsibilities, including with respect to cases pending hearing, as of the date of revocation.

(e) An Awarding Body may voluntarily terminate its Labor Compliance Program. With respect to each contract pending on the date of termination, the Awarding Body shall:

- (1) Notify the Director of its intention and the effective date of the termination;
- (2) Notify the contractor(s) and the Labor Commissioner of the identity of the agent who will carry out the compliance enforcement obligations of Labor Code Section 1771.5 on the remaining contracts; and
- (3) Specify the fund into which penalties or forfeitures withheld from any contract payments shall be deposited.

(f) The Labor Commissioner may, in writing, agree to assume enforcement obligations on pending contracts of an Awarding Body which has voluntarily terminated its Labor Compliance Program. In such case, penalties and forfeitures shall be deposited in the general fund of the state.

(g) Upon receipt of a notice of revocation, a Labor Compliance Program that was approved pursuant to ~~8 C.C.R.~~ section 16426 **below** shall (1) enter into no new contracts to provide labor compliance program services for the purpose of meeting an awarding body's obligation to have a labor compliance program under any statute enumerated in Appendix B to ~~8 C.C.R.~~ ~~section 16423~~ or any other state statute; (2) provide immediate written notice to all awarding bodies for which the Program has an existing contract to provide labor compliance program

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services that the Program has received a revocation notice; and (3) provide all reasonable assistance to those awarding bodies in transferring labor compliance program responsibilities to another approved Program in order to avoid any forfeiture of funds by those awarding bodies and any forfeiture of rights by workers on the projects for which the Program had monitoring and enforcement responsibilities.

NOTE: Authority cited: Section 1773.5, Labor Code. Reference: Sections 1771.5 and 1771.6, Labor Code.

§16423. Approved Labor Compliance Program Required by Statutefor ~~Certain Bond-Funded Projects.~~

~~(a) No Awarding Body may use funds derived from one of the following sources for a public works project unless it initiates and enforces with respect to that project a Labor Compliance Program that complies with the requirements of Labor Code Section 1771.5(b) and has been approved by the Director pursuant to this subchapter.~~

~~(1) Kindergarten University Public Education Facilities Bond Act of 2002 (Part 68.1 (commencing with Section 100600) of the Education Code) for public works that commence on or after April 1, 2003.~~

~~(2) Kindergarten University Public Education Facilities Bond Act of 2004 (Part 68.2 (commencing with Section 100800) of the Education Code).~~

~~(3) Water Security, Clean Drinking Water, Coastal and Beach Protection Act of 2002 (Division 26.5 (commencing with Section 79500) of the Water Code).~~

~~(4) Safe, Reliable High-Speed Passenger Train Bond Act for the 21st Century (Proposed Chapter 20 (commencing with Section 2704) of Division 3 of the Streets and Highways Code) [subject to voter approval].~~

Whenever an Awarding Body is required by statute to enforce or contract to enforce a Labor Compliance Program that contains or meets the requirements of Labor Code section 1771.5, the Awarding Body must have its own program that has been approved by the Direc-

tor pursuant to section 16425 below, unless it fully contracts out its responsibilities and decision-making authority to a third party program that has been approved by the Director pursuant to section 16426 below.

(b) The governing board of any Awarding Body that is required to ~~initiate and~~ enforce a Labor Compliance Program under subpart (a) above shall make a written finding that the Awarding Body has

(1) established its own Labor Compliance Program in accordance with the requirements of Labor Code Section 1771.5(b) and this subchapter; or

(2) has contracted with a third party that has been approved by the Director to operate a Labor Compliance Program in accordance with the requirements of Labor Code Section 1771.5(b) and this subchapter.

Copies of the finding required by this subpart together with (A) notice of whether or not the Awarding Body intends to initiate and enforce its Labor Compliance Program for all public works projects in which the Awarding Body participates, and (B) notice of any contract or agreement with a third party to operate a Labor Compliance Program shall be provided promptly ~~to the Labor Commissioner and shall also be provided to the Director in connection with any application for approval of the Labor Compliance Program under sections 16425 through 16427 below~~ and prior to certifying to any other entity that the Awarding Body has complied with the statutory requirement to have a Labor Compliance Program.

(c) For purposes of these regulations, an approved program refers to the entity that has applied for and received approval by the Director based on a consideration of the factors in sections 16425, 16426, or 16427 below, and not to that entity's manual or methodology for conducting labor compliance enforcement.

(d) Unless otherwise required by statute, an Awarding Body is not required to have separate Labor Compliance Programs, and a third party Labor Compliance Program is not required to have separate approvals from the Director for different types of projects or funding sources, provided that (1) the Awarding Body has provided all notices required by subpart (b) above,

(2) the Labor Compliance Program has timely filed all reports required by this subchapter, and (3) the Director has not otherwise limited the approved scope of operation for the Labor Compliance Program.

(e) ~~(e)~~ The limited exemption from payment of prevailing wages provided by Labor Code Section 1771.5(a) shall *not* apply ~~to a project funded by one of the sources referred to in subpart (a)~~ unless the Awarding Body elects to initiate and enforces a Labor Compliance Program for every public works project under the authority of the Awarding Body.

Authority cited: Section 1773.5, Labor Code. Reference: Sections 17250.30, 81704, 100600-100760 and 100800-100960, Education Code; Section 6531, Government Code; Sections 1771.5, 1771.7, 1771.8 and 1771.9, Labor Code; Sections 20133, 20175.2, 20209.7, 20209.13, 20209.24, and 20919.3, Public Contracts Code; Sections 2704-2704.21, Streets and Highways Code [subject to voter approval]; and Sections 79500-79590, Water Code.

Appendix B

Statutes that require Awarding Bodies to have a Labor Compliance Program as a condition of project authorization, project funding, or use of specified contracting authority (as of January 1, 2008):

(1) Education Code ~~§~~**Section** 17250.30 – sunsets on 1/1/2014~~*~~ [School districts entering into design-build contract for construction of school facility costing over \$2.5 million, unless there is a collective bargaining agreement binding all contractors performing work on the project]. ~~*(As amended by Stats. 2007, Chap. 471 [SB 614].)~~

(2) Education Code ~~§~~**Section** 81704 – sunsets on 1/1/2014~~*~~ [Community College Districts entering into design-build contract for construction of school facility costing over \$2.5 million, unless there is a collective bargaining agreement binding all contractors performing work on the project]. ~~*(As amended by Stats. 2007, Chap. 471 [SB 614].)~~

(3) Government Code ~~§~~**Section** 6531 [Construction contracts awarded by San Diego

Model School Development Agency except for projects in which there is a collective bargaining agreement binding all contractors and subcontractors performing work on the project].

- (4) Labor Code ~~§Section~~ 1771.7 [Public works projects funded by either the Kindergarten-University Public Education Facilities Bond Act of 2002 (Educ. Code, §§100600 et seq.) or the Kindergarten-University Public Education Facilities Bond Act of 2004 (Educ. Code, §§100800 et seq.)].
- (5) Labor Code ~~§Section~~ 1771.8 [Public works projects financed in any part by the Water Security, Clean Drinking Water, Coastal and Beach Protection Act of 2002 (Water Code, §§79500 et seq.)].
- (6) Labor Code ~~§Section~~ 1771.9 – Operation contingent [Public works projects financed in any part by the Safe, Reliable High-Speed Passenger Train Bond Act for the 21st Century, contingent upon voter approval in November 2008 election].
- (7) Public Contracts Code ~~§Section~~ 20133 -- sunsets on 1/1/2011^{*} [Counties for design-build contracts for buildings, directly related improvements, and wastewater treatment facility construction projects costing over \$2.5 million, unless the county or design-build entity has entered into any collective bargaining agreement or agreements that bind all contractors performing work on the project]. ~~*(As amended by Stats. 2007, Chap. 585 [SB 416].)~~
- (8) Public Contracts Code ~~§Section~~ 20175.2 -- sunsets on 1/1/2011^{*} [Cities in Solano and Yolo counties and Cities of Stanton and Victorville for design-build contracts for building construction projects (not including streets and highways, public rail transit, or water resources facilities and infrastructure), unless the city or design-build entity has entered into any collective bargaining agreement or agreements that bind all contractors performing work on the project]. ~~*(As amended by Stats. 2007, Chap. 473 [SB 645].)~~
- (9) Public Contracts Code ~~§Section~~ 20785^{*} by reference to Public Contracts Code

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§20133 -- sunsets on 1/1/2013 [Orange County Sanitation District for design-build contracts for construction projects (including but not limited to public wastewater facilities) costing over \$6 million, unless the district has entered into any collective bargaining agreement or agreements that bind all contractors performing work on the project]. ~~*(Added by Stats. 2007, Chap. 473 [SB 645].)~~

(10) Public Contracts Code ~~§§~~ **Sections** 20209.7 and 20209.13 -- sunsets on 1/1/2011 [Local transit districts entering into design-build contracts for transit projects, other than state highway construction or local street and road projects, unless the local transit operator or design-build entity has entered into a collective bargaining agreement that binds all contractors performing work on the project].

(11) Public Contracts Code ~~§~~ **Section** 20209.24 -- sunsets on 1/1/2010 [Los Angeles County Metropolitan Transportation Authority design-build contract for construction of high occupancy vehicle lane in the County of Los Angeles, unless the Authority or the design-build entity has entered into any collective bargaining agreement or agreements that bind all of the contractors performing work on the project].

(12) Public Contracts Code ~~§~~ **Section** 20919.3 -- sunsets on 12/1/2012 [Los Angeles Unified School District job order construction contracts of \$1 million or less, unless the school district or job order contractor has entered into any collective bargaining agreement or agreements that bind all contractors performing work on the project].

(13) Public Resources Code Section 75075 [Public works projects financed in any part by the Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006].

Article 2. Approval and Revocation of Approval of Labor Compliance Programs by Director

§16424. Application for Approval.

An application for ~~Initial~~ Approval of an Awarding Body's Labor Compliance Program or for Approval of a Third Party Labor Compliance Program shall include the information specified either in ~~S~~section 16425(a) or in ~~S~~section 16426(a) respectively, and shall be sent to the following address:

Office of the Director
Department of Industrial Relations
455 Golden Gate Avenue, 10th Floor
San Francisco, CA 94102
Attention: Executive Assistant to the Director

Suggested application forms are available on the Department of Industrial Relations' web site.

NOTE: Authority cited: Section 1773.5, Labor Code. Reference: Sections 1771.5 and 1771.9, Labor Code.

§16425. ~~Initial~~ Approval of Awarding Body's Labor Compliance Program.

(a) An Awarding Body seeking approval of a its own Labor Compliance Program shall submit evidence of its ~~ability to operate its Labor Compliance Program. Prior to granting approval, the Director shall consider the following factors for purposes of evaluating the~~ Awarding Body's capacity and ability to operate an effective Labor Compliance Program consistent with applicable legal requirements, based on the following factors:

(1) Experience and training of the Awarding Body's personnel on public works labor compliance issues, including private sector experience on behalf of unions or contractors or on a joint labor-management committee established pursuant to the federal Labor Management Cooperation Act of 1978 (section 175a of Title 29 of the United States Code) and participa-

tion in any public works enforcement training provided by the Division of Labor Standards Enforcement;

(2) The average number of public works contracts the Awarding Body annually administers;

(3) Whether the Labor Compliance Program is a joint or cooperative venture among Awarding Bodies, and how the resources and expanded responsibilities of the Labor Compliance Program compare to the Awarding Bodies involved;

(4) The Awarding Body's record of taking cognizance of Labor Code violations and of withholding in the preceding five years;

(5) The availability of competent legal support for the Labor Compliance Program;

(6) The availability and quality of a manual outlining the responsibilities and procedures of the Labor Compliance Program to the Awarding Body; and

(7) The method by which the Awarding Body will transmit notice to the Labor Commissioner of violations which may lead to debarment under Labor Code Section 1777.1.

(b) The Director shall notify the Awarding Body within ~~30~~ 60 days of receipt of the request for approval that ~~initial~~ approval is granted and the effective date of ~~initial~~ approval, or that the request is incomplete and of the materials necessary to complete the request or that the request is disapproved for other reasons.

(c) ~~Initial approval of a Labor Compliance Program shall automatically expire one year after approval unless an extension is granted in writing by the Director. Where necessary to coordinate with the local government's fiscal year or existing public works procedures, initial approval may be for a period up to 18 months. The Director may grant approval on an interim or temporary basis and may impose specific restrictions on a Program's operation, subject to reasonable conditions for removing an interim or temporary designation or other specified restrictions.~~

(d) The Director will maintain a list of all ~~initially~~ approved Labor Compliance Programs, including programs approved on an interim, temporary or restricted basis, for distribution to

interested parties upon request.

(e) An Awarding Body that intends to operate a Labor Compliance Program on behalf of other Awarding Bodies or Joint Powers Authorities must obtain approval pursuant to section 16426 below.

(f) A Labor Compliance Program with an initial approval or extended initial approval that is set to expire on or after October 1, 2008, shall be entitled to convert to approved status without a prescribed expiration date and subject to revocation only in accordance with section 16428 below, upon providing satisfactory evidence to the Director of all of the following:

(1) the program has submitted timely, accurate, and complete annual reports in accordance with section 16431 below;

(2) the program continues to employ personnel with experience and training on public works labor compliance issues;

(3) competent legal support remains available to the program;

(4) the program's manual of policies and procedures has been updated to accurately reflect any amendments to the public works laws and regulations (including the laws and regulations governing labor compliance programs) between the time of the program's approval and the effective date of this subpart; and

(5) the program is in compliance with any specific conditions placed by the Director on its approval, and there is no written decision, order, or directive that requires the program either to cease or limit its operations as of a specified date.

NOTE: Authority cited: Section 1773.5, Labor Code. Reference: Sections 1771.5, 1771.6, 1771.7, 1771.8, and 1777.1, Labor Code; Section 175a, Title 29 United States Code.

§16426. ~~Initial~~ Approval of Third Party Labor Compliance Program.

(a) Any entity seeking approval to operate a Labor Compliance Program pursuant to a contract with one or more Awarding Bodies or Joint Powers Authorities shall submit evidence of

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~~its ability to operate a Labor Compliance Program. Prior to granting approval, the Director shall consider the following factors for purposes of evaluating the entity's capacity and ability to operate an effective Labor Compliance Program consistent with applicable legal requirements, based on the following factors:~~

(1) Experience and training of the entity's personnel on public works labor compliance issues, including private sector experience on behalf of unions or contractors or on a joint labor-management committee established pursuant to the federal Labor Management Cooperation Act of 1978 (section 175a of Title 29 of the United States Code) and participation in any public works enforcement training provided by the Division of Labor Standards Enforcement;

(2) The geographical area in which the entity intends to operate its Labor Compliance Program and the identity of the Awarding Bodies and Joint Powers Authorities, if any, with whom the entity intends to contract for operation of a Labor Compliance Program;

(3) Whether the entity shares personnel, management, ownership or other close affiliation with (A) any contractor or subcontractor that within the preceding five years has been awarded a public works contract within the geographical area with any Awarding Body or Joint Powers Authority identified in subpart (2), (B) any person or entity who has been the surety on such a contract, (C) any joint labor-management committee established pursuant to the Federal Labor Management Cooperation Act of 1978 (section 175a of Title 29 of the United States Code), or (D) any person or entity who has represented workers employed in the same or similar classifications as those employed for such a contract and who has been engaged in (i) an organizational campaign under the National Labor Relations Act with contractors competing for such contracts or (ii) a jurisdictional dispute with another collective bargaining representative of workers utilized for such contracts;

(4) The record of any contractor, subcontractor, surety, or worker representative referred to in subpart (3) with respect to compliance and enforcement or aiding in the compliance and enforcement of prevailing wage requirements under the Labor Code in the preceding five years;

- (5) The availability of competent legal support for the Labor Compliance Program and whether the persons or firms providing that support also represent any contractor, subcontractor, surety, or worker representative referred to in subpart (3);
- (6) The availability and quality of a manual outlining the responsibilities and procedures of the Labor Compliance Program to any Awarding Body or Joint Powers Authority with which it contracts;
- (7) The method by which the Labor Compliance Program will transmit notice to the Labor Commissioner of violations which may lead to debarment under Labor Code Section 1777.1; ~~and~~
- (8) Awareness of the rights and responsibilities imposed on the Labor Compliance Program as an agent of a governmental agency under ~~Section~~ Section 16421(c) above and the existence of procedures designed to inform personnel of the Labor Compliance Program of these rights and responsibilities and to insure the compliance of employees and consultants who participate in making government decisions with conflict of interest reporting requirements, such as through participation in internet-based or live training programs provided by the Fair Political Practices Commission; and
- (9) The identity by job title and number of program employees who will participate in making governmental decisions within the meaning of Title 2 California Code of Regulations sections 18700 through 18702.4 or any successor regulations, and whether required statements of economic interest (FPPC Form 700) will be filed with local awarding bodies with which the program contracts, with the Director, or with some other specified entity.
- (b) The Director shall notify the applicant within ~~30~~ 60 days of receipt of the request for approval that ~~initial~~ approval is granted and the effective date of ~~initial~~ approval, or that the request is incomplete and of the materials necessary to complete the request or that the request is disapproved for other reasons.
- (c) ~~Initial approval of a third party Labor Compliance Program shall automatically expire one year after approval unless an extension is granted in writing by the Director. The Director~~

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may grant approval on an interim or temporary basis and may impose specific restrictions on a Program's operation, subject to reasonable conditions for removing an interim or temporary designation or other specified restrictions.

(d) The Director will maintain a list of all ~~initially~~ approved third party Labor Compliance Programs, including programs approved on an interim, temporary or restricted basis, for distribution to interested parties upon request.

(e) When the Director has approved a third party entity to operate a Labor Compliance Program pursuant to Article 2 of this subchapter, that approval shall extend to any Awarding Body or Joint Powers Authority that has contracted with the approved entity for operation of its Labor Compliance Program, subject to the following:

(1) No such approval shall apply unless the Awarding Body or Joint Powers Authority has first provided written notice to the Director of its contractual relationship with the approved entity together with such further information as the Director may reasonably require to document that relationship, as well as notice of whether or not the Awarding Body intends to initiate and enforce its Labor Compliance Program for all public works projects in which the Awarding Body participates;

(2) The parties shall provide immediate written notice to the Director and the Labor Commissioner upon the termination or proposed termination of such contractual relationship; and

(3) For good cause, the Director may disallow or withdraw approval for the operation of a Labor Compliance Program as to any particular Awarding Body or Joint Powers Authority, whether or not the third party entity remains approved to operate a Labor Compliance Program on behalf of one or more other Awarding Bodies or Joint Powers Authorities.

(f) A third party Labor Compliance Program with an initial approval or extended initial approval that is set to expire on or after October 1, 2008, shall be entitled to convert to approved status without a prescribed expiration date and subject to revocation only in accordance with section 16428 below, upon providing satisfactory evidence to the Director of all of the following:

(1) the program has submitted timely, accurate, and complete annual reports in accordance with section 16431 below;

(2) the program continues to employ personnel with experience and training on public works labor compliance issues;

(3) competent legal support remains available to the program;

(4) the program's manual of policies and procedures has been updated to accurately reflect any amendments to the public works laws and regulations (including the laws and regulations governing labor compliance programs) between the time of the program's approval and the effective date of this subpart; and

(5) the program is in compliance with any specific conditions placed by the Director on its approval, and there is no written decision, order, or directive that requires the program to cease or limit its operations as of a specified date.

NOTE: Authority cited: Section 1773.5, Labor Code. Reference: Sections 1771.5, 1771.6, 1771.7, 1771.8, 1771.9, and 1777.1, Labor Code; Section 175a, Title 29 United States Code.

§16427. ~~Final Approval~~ Extended Authority.

(a) An Awarding Body or third party entity which has operated a Labor Compliance Program with active enforcement responsibilities for at least ~~eleven continuous months~~ three consecutive years after initial approval may apply to the Director for ~~final approval~~ extended authority. The applicant bears the burden of producing evidence that it meets the criteria in subpart (b).

(b) The Director ~~will~~ may grant ~~final approval~~ extended authority to an ~~if the~~ applicant that has satisfactorily demonstrated its understanding of and ability to monitor compliance with the requirements of the Labor Code and these regulations, and that has filed timely, complete, and accurate reports as required by these regulations.

(c) The Director shall notify the applicant within ~~30~~ 90 days of the receipt of a request for ~~final approval~~ extended authority that ~~final approval~~ the request is granted and the effective

date of and extent of any extended authority that is granted~~final approval~~, or that the request for ~~final approval~~ is denied and; the reason for the denial ~~and the status of the Labor Compliance Program~~.

(d) A Labor Compliance Program ~~which has received final approval~~ with extended authority may enter into an agreement with the Labor Commissioner providing for different procedures for securing approval of forfeitures than those set forth in ~~Section~~ Section 16437 below.

(e) Any Labor Compliance Program with final approval on the effective date of the amendments changing “final approval” to “extended authority” shall automatically be converted to the status of having “extended authority.” The Director will maintain a list of ~~all finally approved~~ Labor Compliance Programs with extended authority, for distribution to interested parties upon request. The Director may agree to alternative reporting formats under ~~Section~~ Section 16431 of these regulations for such programs, and shall maintain a list of interested parties who wish notification of alternative reporting formats before adoption.

NOTE: Authority cited: Section 1773.5, Labor Code. Reference: Sections 1771.5 and 1771.6, Labor Code.

§16428. Revocation of Approval.

(a) The Director may revoke approval of a Labor Compliance Program after giving due notice, conducting a hearing if appropriate, and finding cause for revocation. Cause for revocation of approval includes, but is not limited to:

- (1) Failure of the Labor Compliance Program to monitor compliance with the requirements of the Labor Code and these regulations or to take appropriate enforcement action for violations of which it becomes or should have become cognizant;
- (2) Failure of the Labor Compliance Program to file timely, complete, and accurate reports to the Director as required by Section 16431 or elsewhere in these regulations.;
- (3) A pattern of failures in hearings conducted pursuant to Labor Code Section 1742(b) either (A) to establish violations under Labor Code Sections 1775(a) and 1776(g) for which con-

tract payments have been withheld or (B) to comply with the requirements imposed on enforcing agencies or their representatives in the prevailing wage hearing regulations at ~~Sections~~ 17201 – 17270 of Title 8 of the California Code of Regulations;

(4) Failure to comply with applicable laws and reporting requirements pertaining to conflicts of interest and the handling of personnel and payroll records and information;

(5) Failure to comply with requirements imposed on Labor Compliance Programs by statute or these regulations or with any terms, conditions, or restrictions imposed by the Director on the Labor Compliance Program.

(b) Interested parties may request the Director to revoke approval of a Labor Compliance Program. A request for revocation shall include evidence of failure of the Labor Compliance Program to monitor compliance with the requirements of the Labor Code and these regulations or to take enforcement action after becoming cognizant of a violation of the Labor Code or these regulations. A request for revocation shall also include any other relevant evidence.

(1) Approval of a Labor Compliance Program may be revoked by the Director based on a request by an interested party after a proceeding conducted as provided in ~~subdivision~~ subpart (a). A copy of the request for revocation shall be provided to the Awarding Body as part of the notice required under ~~subdivision~~ subpart (a).

(2) As part of a proceeding for revocation of approval based on a request by an interested party, the Director may require the Labor Compliance Program to furnish a supplemental report for the period between the ending date of the last annual report filed by the Labor Compliance Program pursuant to ~~Section~~ 16431 and the date of notice by the Director, and containing the information listed in ~~subdivision~~ subpart (a) of said ~~Section~~ 16431.

(3) Revocation of approval of a Labor Compliance Program based on a request by an interested party is solely within the discretion of the Director. The duty to operate a Labor Compliance Program in accordance with the requirements of this subchapter runs solely to the Director and not to any worker, contractor, or interested party. The sole remedy for failure to comply with this duty is revocation of approval by the Director.

(c) Upon determining that the request for revocation will be denied without hearing, the Director shall give notice of the decision and of the reasons therefore by mail to the Labor Compliance Program, any Awarding Body or Joint Powers Authority that has contracted with the Labor Compliance Program pursuant to ~~Section~~ Section 16421(b) above, and any interested party that requested revocation.

(d) Upon determining that a hearing is necessary, the parties will be notified and a hearing on cause for revocation of Labor Compliance Program approval will be held in accordance with the procedures for notice and hearing proceedings set forth in ~~8 CCR Section~~ Section 16304 of Title 8 of the California Code of Regulations.

(e) The Labor Commissioner is authorized to conduct investigations into whether a Labor Compliance Program has operated in accordance with the requirements of this subchapter and to participate in the role of prosecutor in any revocation proceedings. The Director shall make all final determinations.

(e) Nothing in this Section shall be construed as (1) requiring the Director either to extend any term of initial approval granted on a temporary or interim basis pursuant to Sections 16425 or 16426 above or to grant Final Approval except in accordance with Section 16427(b) above (2) restricting the Director's authority to impose conditions or restrictions on the operation or continued operation of a Labor Compliance Program in lieu of revoking its approval.

NOTE: Authority cited: Sections 55, 1773.5, Labor Code. Reference: Sections 55, 1742(b), 1771.5, 1775(a), and 1776(g), Labor Code.

§16429. Notice of Labor Compliance Program Approval.

(a) Notice of ~~initial or final~~ approval of an Awarding Body's Labor Compliance Program shall be given in the Call for Bids and in the contract or purchase order and shall also be posted at the job site. If more than one job site exists or where such posting would endanger public safety, the notice may be posted in the manner prescribed by ~~8 CCR Section~~ Section

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16100(b) of Title 8 of the California Code of Regulations.

(b) Notice of an approved Labor Compliance Program shall contain, at the minimum, the effective date of the Director's ~~initial or final~~ 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 Labor Compliance Program, a telephone number to call for inquiries, questions, or assistance with regard to the Labor Compliance Program, and the name of the agent or office administering the Labor Compliance Program.

NOTE: Authority cited: Section 1773.5, Labor Code. Reference: Section 1771.5, Labor Code.

~~§16430. [Reserved]~~

Article 3. Reports and Audits

§ 16430. Filing of Statements of Economic Interest (FPPC Form 700) by Designated Employees and Consultants of Labor Compliance Program.

(a) An Awarding Body that operates either its own labor compliance program or that contracts with a third party to operate all or part of its labor compliance program shall determine and designate those employees and consultants of the program who participate in making governmental decisions for the Awarding Body within the meaning of Title 2, California Code of Regulations, sections 18700 – 18702.4. Those designated employees and consultants shall be required to file Statements of Economic Interest (FPPC Form 700) and to comply with other applicable requirements of the Political Reform Act (commencing with Section 87100 of the Government Code) in connection with work performed on behalf of the Awarding Body.

(b) Designated employees and consultants who operate or are employed by a third party labor compliance program shall file their Statements of Economic Interest (FPPC Form 700) with the filing officer of each Awarding Body with which the third party program contracts, unless the Department of Industrial Relations or the Fair Political Practices Commission specifies a different or alternative filing location.

Authority cited: Section 1773.5, Labor Code. Reference: Sections 87100, et seq., Government Code; Section 1771.5, Labor Code.

~~§16431. Annual Report. [Option A]~~

~~(a) The Labor Compliance Program shall submit to the Director an annual report on its operation within 60 days after the close of its annual reporting period, as defined in subpart (c) (d) below. The annual report shall identify each Awarding Body covered by the report, and for each Awarding Body shall separately report contain, at the a minimum, the following information:~~

~~(1) Number of contracts monitored or enforced, and their total value;~~

~~(2) If applicable, the number, description, and total value of contracts awarded which were exempt from the requirement of payment of prevailing wages pursuant to Labor Code Section 1771.5(a);~~

~~(3) A summary of penalties and forfeitures imposed and withheld, or recovered in proceedings under Labor Code Section 1742 or in a court of competent jurisdiction;~~

~~(4) A summary of wages due to employees resulting from failure by contractors or subcontractors to pay prevailing wage rates, the amount withheld from money due the contractors, and the additional amounts recovered by action through voluntary payments or in proceedings under Labor Code Section 1742 or in any court of competent jurisdiction.~~

~~(5) A summary of wage deficiencies resolved without seeking a penalty determination in accordance with section 16432(e) below; and~~

~~(6) Such additional information as the Labor Compliance Program may be required to report as a condition of its approval.~~

~~(5) (b) The Annual Report ~~For a person or private entity operating a third party Labor Compliance Program shall also include, (A1) a certification of compliance with conflict of interest disclosure requirements by employees and consultants who participate in making governmental decisions, as defined under 2 C.C.R. Section 18701, and (B2) a current statement~~~~

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~~disclosing the information required under 8 C.C.R. Section 16426(a)(2), (3) and (5) above.~~

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

~~(c) 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 Labor Compliance Program. Suggested annual report forms that are designed to provide the necessary detail shall be available on the Department of Industrial Relations' web site.~~

~~(c) (d) For purposes of this section, the annual reporting period shall be deemed to commence on the first of the month in which a Labor Compliance Program is first granted initial approval pursuant to Section 16425 or 16426 above and shall conclude on the last day of the month immediately preceding preceding that date in the following year. A Labor Compliance Program shall use the same reporting period in succeeding years; *provided that* for good cause the Director may authorize a change in the reporting period.~~

~~NOTE: Authority cited: Section 1773.5, Labor Code. Reference: Sections 1771.5, 1771.6 and 1777.1, Labor Code.~~

\$16431. Annual Report. ~~{Option B}~~

(a) The Labor Compliance Program shall submit to the Director an annual report on its operation within 60 days after the close of its annual reporting period, as defined in subpart (c) (d) below. The annual report shall be made on the appropriate form [LCP-AR1, LCP-AR2, or LCP-AR3³], for the type of Labor Compliance Program that is submitting the report, unless the Director has agreed to a different reporting format for a Program that has been granted ~~final approval or~~ extended authority under section 16427 **above**. A third party Labor

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Compliance Program that contracted with more than one Awarding Body or Joint Powers Authority during the annual reporting period shall separately report on Labor Code Section 1771.5(b) enforcement activities for each Awarding Body or Joint Powers Authority covered by the report. contain, at the a minimum, the following information:

~~(1) Number of contracts monitored or enforced, and their total value;~~

~~(2) If applicable, the number, description, and total value of contracts awarded which were exempt from the requirement of payment of prevailing wages pursuant to Labor Code Section 1771.5(a);~~

~~(3) A summary of penalties and forfeitures imposed and withheld, or recovered in proceedings under Labor Code Section 1742 or in a court of competent jurisdiction;~~

~~(4) A summary of wages due to employees resulting from failure by contractors or subcontractors to pay prevailing wage rates, the amount withheld from money due the contractors, and the amount recovered by action in any court of competent jurisdiction.~~

~~(5) (b) The Annual Report f~~For a person or private entity operating a third party Labor Compliance Program shall also include; ~~(A1)~~ 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, C.C.R. Section 18701, and ~~(B2)~~ a current statement disclosing the information required under ~~8 C.C.R. s~~Section 16426(a)(2), (3) and (5) above.

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

(c) 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 Labor Compliance Program. An annual report shall also include such additional information as the Labor Compliance Program may be required to report as a condition of its approval.

(e) ~~(d)~~ For purposes of this section, the annual reporting period shall be deemed to commence on the first of the month in which a Labor Compliance Program is first granted ~~initial~~-approval pursuant to ~~§~~section 16425 or 16426 above and shall conclude on the last day of the month immediately ~~proceeding~~preceding that date in the following year. A Labor Compliance Program shall use the same reporting period in succeeding years; provided that for good cause the Director may authorize a change in the reporting period.

NOTE: Authority cited: Section 1773.5, Labor Code. Reference: Sections 1771.5, 1771.6 and 1777.1, Labor Code.

~~[*Forms LGP-AR1, LGP-AR2, and LGP-ARP are in separate attachments.]~~

~~§16432. Payroll Record Review, Investigations, and Audits. [Option A]~~

~~(a) Audits may be conducted when deemed necessary by the Labor Compliance Program or upon request of the Labor Commissioner. The Labor Compliance Program shall check that all weekly payroll records are submitted by a contractor or subcontractor pursuant to Section 16421(a)(3) and shall determine that the payroll records are complete by ensuring that all appropriate data elements have been reported, and the certification forms are completed and signed pursuant to Labor Code Section 1776(a).~~

~~(b) The Labor Compliance Program shall inspect all payroll records at least once during the initial quarter of a contractor's or subcontractor's work on an applicable project. At the Labor Compliance Program's option, this inspection may consist of sampling of a payroll record to ensure that compliance is maintained. The inspection shall ensure that each contractor and subcontractor is using the appropriate prevailing wage rate for each classification of labor. If a contractor or subcontractor has demonstrated compliance with prevailing wage laws, subsequent inspections may be limited to once each quarter, but in no case less than once for~~

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~~each contractor or subcontractor during the course of their work. Each contractor or subcontractor shall be inspected for compliance at a level consistent with their demonstrated compliance based on the initial and subsequent inspections.~~

~~(c) If, during a check or inspection of payroll records, the Labor Compliance Program becomes aware of information that indicates possible non-compliance with prevailing wage law requirements, or if a credible complaint is filed with the Labor Compliance Program, an investigation of that information or complaint shall be conducted to determine whether violations have occurred. Appropriate investigatory action may include, but is not limited to, interviewing workers or other available witnesses; comparing payroll records with available public works site information; and obtaining information from any available source which might reasonably suggest or establish prevailing wage violations.~~

~~(b)(d) An audit consists of a comparison of payroll records to the best available information as to the actual hours worked and classifications of workers employed on the contract. An audit is sufficiently detailed when it enables the Labor Compliance Program, and the Labor Commissioner in reviewing proposed penalties, to draw reasonable conclusions as to compliance with the requirements of Chapter 1 of Part 7 of Division 2 of the Labor Code, and to enable accurate computation of underpayment of wages to workers and of 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. An audit record in the form set out in Appendix BC presumptively demonstrates sufficiency. An audit of a contractor or subcontractor may be conducted when deemed necessary by the Labor Compliance Program based on investigations that substantiate that a violation by that contractor or subcontractor has occurred. An audit shall be conducted upon request by the Labor Commissioner. The Labor Compliance Program may limit its audit computations of wage underpayments and applicable penalties to the specific contractor or subcontractor, specific types of violations revealed and specific workers identified during its inspection and/or investigation.~~

~~(e) After the Labor Compliance Program has determined that violations of the prevailing~~

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~~wage laws by a contractor or subcontractor have resulted in the underpayment of wages to workers, notification may 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 pursuant to these regulations. The contractor and affected subcontractor may, within 30 days after notification of the wage deficiency, submit to the Labor Compliance Program for consideration exculpatory information consistent with the “good faith mistake” factors set forth in Labor Code section 1775(a)(2)(A)(i) and (ii). If, based upon the contractor's submission, the Labor Compliance Program reasonably concludes that the failure to pay the correct wages was a good faith mistake, and has no knowledge that the contractor and affected subcontractor have a prior record of failing to meet their prevailing wage obligations, the Labor Compliance Program shall not be required to request a determination of the amount of penalties to be assessed under Labor Code section 1775 if the underpayment of wages to workers is promptly corrected and proof of such payment submitted to the Labor Compliance Program. For each instance in which a wage deficiency is resolved in accordance with this regulation, the Labor Compliance Program shall provide to the Labor Commissioner a copy of the exculpatory information submitted to the Labor Compliance Program by the contractor or affected subcontractor, identifying the public works project, the contractor or affected subcontractor, and the gross amount of wages paid to workers to resolve the prevailing wage deficiency.~~

~~NOTE: Authority cited: Section 1773.5, Labor Code. Reference: Sections 224, 226, 1771.5, 1773.1, 1773.2, 1776, 1777.5, 1778, 1810, 1815, 1860 and 1861, Labor Code.~~

~~Appendix BC~~

~~Audit Record Form (suggested for use with Section 16432 audits)~~

~~An audit record is sufficiently detailed to verify “compliance with the requirements of Chapter 1 of Part 7 of Division 2 of the Labor Code,” when the audit record displays that the following procedures were accomplished:~~

~~(1) Audits of the obligation to secure workers' compensation means demanding written evidence of a binder issued by the carrier, or telephone or written inquiry to the Workers'~~

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~~Compensation Insurance Rating Bureau;~~

~~(2) Audits of the obligations to employ and train apprentices means inquiry to the program sponsor for the apprenticeable craft or trade in the area of the public works as to: whether contract award information was received, including an estimate of journey person hours to be performed and the number of apprentices to be employed; whether apprentices have been requested, and whether the request has been met; whether the program sponsor knows of any amounts sent by the contractor or subcontractor to it for the training trust, or the California Apprenticeship Council; and whether persons listed on the certified payroll in that craft or trade as being paid less than the journey person rate are apprentices registered with that program and working under apprentice agreements approved by the Division of Apprenticeship Standards;~~

~~(3) Audits of the obligation to pass through amounts made part of the bid for apprenticeship training contributions, to either the training trust or the California Apprenticeship Council, means asking for copies of checks sent, or when the audit occurs more than 30 days after the month in which payroll has been paid, copies of canceled checks;~~

~~(4) Audits of “illegal taking of wages” means inspection of written authorizations for deductions (listed in Labor Code Section 224) in the contractor or subcontractor’s files and comparison to wage deduction statements furnished employees (Labor Code Section 226), together with an interview of several employees as to any payments not shown on the wage deduction statements;~~

~~(5) Audits of the obligation to keep records of working hours, and pay not less than required by Title 8 CCR Section 16200(a)(3)(F) for hours worked in excess of 8 hours are the steps for review and audit of Certified Weekly Payrolls under Title 8 CCR Section 16432;~~

~~(6) Audits of the obligations to pay the prevailing per diem wage, means such steps for review and audit of Certified Weekly Payrolls which will produce a report covering compliance in the areas of:~~

~~(A) All elements defined as the “General Prevailing Rate of Per Diem Wages” in Labor~~

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~~Code Sections 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;~~

~~(B) All elements defined as "Employer Payments" set forth in Labor Code Section 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 Labor Code Section 1773.2 was to be specified in the call for bids, made available in its principal office and posted.~~

§16432. Audits. Investigation Methods For Labor Compliance Programs – Definitions and Minimum Requirements, Including Review, Confirmation and Audits of Payroll Records; On-Site Visits; and Early Resolution of Audits. [Option B]

~~(a) Payroll records shall be reviewed as required under Labor Code Section 1771.5(b)(4). Audits may shall be conducted when deemed necessary by the Labor Compliance Program or upon request of the Labor Commissioner.~~

~~(b) An audit consists of a comparison of payroll records to the best available information as to the actual hours worked and classifications of workers employed on the contract. Information available for comparison purposes may include times cards, paychecks and stubs, project daily reports, and interviews with persons working on the project. An audit is sufficiently detailed when it enables the Labor Compliance Program, and the Labor Commissioner in reviewing proposed penalties, to draw reasonable conclusions as to compliance with the requirements of Chapter 1 of Part 7 of Division 2 of the Labor Code, and to enable accurate computation of underpayment of wages to workers and of 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. An audit record in the form set out in Appendix BC presumptively demonstrates sufficiency.~~

~~(a) The primary function of the Labor Compliance Program is to ensure that public works contractors comply with the prevailing wage requirements found in the Public Works Chap-~~

ter of the Labor Code. This regulation is intended to establish minimum requirements which all Labor Compliance Programs shall meet or exceed in carrying out that function. Definitions found throughout this regulation are intended to provide Labor Compliance Programs and representatives of the Department of Industrial Relations and the Division of Labor Standards Enforcement with common terminology as they each perform their respective roles in prevailing wage enforcement in furtherance of the Labor Code provisions establishing Labor Compliance Programs. This regulation is also intended to confirm that the proactive investigation methods, as described in detail herein, only comprise the minimum obligations required of Labor Compliance Programs to satisfy their duty to the Director to operate a Labor Compliance Program as specified in sections 16428 and 16434.

(b) Payroll records furnished by contractors and subcontractors in accordance with section 16421(a)(3) above, and in a format prescribed at ~~§ C. C. R.~~ section 16401 **of Title 8 of the California Code of Regulations**, shall be reviewed by the Labor Compliance Program as promptly as practicable after receipt thereof, but in no event more than 30 days after such receipt. “Review” for this purpose shall be defined as inspection of the records furnished to determine if (1) all appropriate data elements identified in Labor Code Section 1776(a) have been reported; (2) certification forms have been completed and signed in compliance with 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 in the manner and to the extent described in subpart (c) below.

(c) “Confirmation” of payroll records furnished by contractors and subcontractors shall be 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” (as defined at ~~§ C. C. R.~~ 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,** ~~c~~Confirmation of **furnished** payroll records furnished ~~may shall~~ be undertaken randomly **for at least one**

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worker for at least one weekly period within that month. Confirmation shall also ~~or as deemed necessary by the Labor Compliance Program, and shall~~ be undertaken whenever complaints from workers or other interested persons or other circumstances or information reasonably suggest to the Labor Compliance Program that payroll records furnished by a contractor or subcontractor are inaccurate. ~~Confirmation of furnished payroll records shall be undertaken for each contractor during each month that each contractor's workers are listed as having been employed in the execution of the contract for public work.~~

(d) Representatives of the Labor Compliance Program shall conduct in-person inspections at the site or sites at which the contract for public work is being performed ("On-Site Visits"). On-Site Visits may be undertaken randomly or as deemed necessary by the Labor Compliance Program, but shall be undertaken during each week that workers are present at sites at which the contract for public work is being performed. All On-Site Visits shall include visual inspection of (1) the copy of the determination(s) of the Director of Industrial Relations of the prevailing wage rate of per diem wages required to be posted at each job site in compliance with Labor Code Section 1773.2, and (2) the Notice of Labor Compliance Program Approval required to be posted at the job site in accordance with section 16429 above, listing a telephone number to call for inquiries, questions, or assistance with regard to the Labor Compliance Program. On-Site Visits may include other activities deemed necessary by the Labor Compliance Program to independently corroborate prevailing wage payments reported on payroll records furnished by contractors and subcontractors.

(e) An Audit, as defined herein, shall be prepared by the Labor Compliance Program whenever the Labor Compliance Program has determined that there has been a violation of the Public Works Chapter of the Labor Code resulting in the underpayment of wages. An "Audit" for this purpose shall be defined as a written summary reflecting prevailing wage deficiencies for each underpaid worker, and including any penalties to be assessed under Labor Code sections 1775 and 1813, as determined by the Labor Compliance Program after consideration of the best information available as to actual hours worked, amounts paid and classifications of workers employed in connection with the public work. Such available informa-

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tion may include, but is not limited to, worker interviews, complaints from workers or other interested persons, all time cards, cancelled checks, cash receipts, trust fund forms, books, documents, schedules, forms, reports, receipts or other evidences which reflect job assignments, work schedules by days and hours, and the disbursement by way of cash, check, or in whatever form or manner, of funds to a person(s) by job classification and/or skill pursuant to a public works project. An Audit is sufficiently detailed when it enables the Labor Commissioner, if requested to determine the amount of forfeiture under section 16437, to draw reasonable conclusions as to compliance with the requirements of the Public Works Chapter of the Labor Code, and to enable accurate computation of underpayments of wages to workers and of applicable penalties and forfeitures. An Audit ~~in the format set out~~ **using the forms in Appendix C**, when accompanied by a brief narrative identifying the Bid Advertisement Date of the contract for public work and summarizing the nature of the violation and the basis upon which the determination of underpayment was made, presumptively demonstrates sufficiency. Records supporting an Audit shall be maintained by the Labor Compliance Program to satisfy its burden of coming forward with evidence in administrative review proceedings under Labor Code Section 1742 and the Prevailing Wage Hearing Regulations found at ~~8 C.C.R.~~ sections 17201-17270 **of Title 8 of the California Code of Regulations.**

(f) After the Labor Compliance Program has determined that violations of the prevailing wage laws have resulted in the underpayment of wages and an audit has been prepared, notification ~~may~~ **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 pursuant to these regulations. The contractor and affected subcontractor may, within 10 days after notification of the wage deficiency, submit to the Labor Compliance Program for consideration exculpatory information consistent with the “good faith mistake” factors set forth in Labor Code Section 1775(a)(2)(A)(i) and (ii). If, based upon the contractor's submission, the Labor Compliance Program reasonably concludes that the failure to pay the correct wages was a good faith mistake, and has no knowledge that the contractor and affected subcontractor have a prior record of failing to meet their prevailing wage obliga-

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tions, the Labor Compliance Program shall not be required to request the Labor Commissioner for a determination of the amount of penalties to be assessed under Labor Code Section 1775 if the underpayment of wages to workers is promptly corrected and proof of such payment is submitted to the Labor Compliance Program. For each instance in which a wage deficiency is resolved in accordance with this regulation, the Labor Compliance Program 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 subpart (e) above along with any exculpatory information submitted to the Labor Compliance Program by the affected contractor or subcontractor.

NOTE: Authority cited: Section 1773.5, Labor Code. Reference: Sections ~~224, 226,~~ 1742, 1771.5, 1773.2, 1775, 1776, 1777.5, 1778, 1810, 1815, 1860 and ~~1813-1861,~~ Labor Code.

~~Option B – delete Appendix BC above and replace with Audit Record worksheets (Summary form and individual worksheets) traditionally used by Labor Commissioner. [Note: these forms are in a separate attachment.]~~

Appendix C – Audit Record Worksheet Forms

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

Article 4. Limited Exemption from the Requirement to Pay Prevailing Wages

§16433. Limited Exemption.

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(a) As provided in Labor Code Section 1771.5(a), an Awarding Body which operates an approved Labor Compliance Program for all public works projects in which the Awarding Body participates shall not require payment of the general rate of per diem wages or the general rate of per diem wages for holiday and overtime work for any public works project of \$25,000 or less when the project is for construction or installation work, or of \$15,000 or less when the project is for alteration, demolition, repair, or maintenance work.

(b) A project for construction, installation, alteration, demolition, repair, or maintenance work shall be identified as such in the call for bids, and in the contract or purchase order.

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

NOTE: Authority cited: Section 1773.5, Labor Code. Reference: Sections 1720(a)(1) and 1771.5, Labor Code.

Article 5. Enforcement

~~§16434. Duties of Labor Compliance Program. [Option A]~~

~~(a) A Labor Compliance Program shall have a duty to the Director to enforce the requirements of Chapter 1 of Part 7 of Division 2 of the Labor Code and these regulations in accordance with the Precedential prevailing wage decisions issued by the Director and in a manner consistent with the practice of the Labor Commissioner. It is the practice of the Labor Commissioner to refer to the Director's ongoing advisory service of web-posted public works coverage determinations as a source of information and guidance in making enforcement decisions.~~

~~(b) The duties of a Labor Compliance Program with respect to apprentices are as follows: Either the Awarding Body or the Labor Compliance Program acting on its behalf shall:~~

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~~(1) insert language contained in Labor Code Section 1777.5 in the public works contract and discuss the apprenticeship requirements in the pre-job conference;~~

~~(2) send copies of awards and notices of discrepancies to the Division of Apprenticeship Standards as required under section 1773.3 of the Labor Code;~~

~~(3) verify that workers listed and paid as apprentices on a contractor or subcontractor's certified payroll records are duly registered as apprentices under Chapter 4, Division 3 of the Labor Code, commencing with Section 3070;~~

~~(4) refer complaints and promptly report suspected violations of apprenticeship requirements to the Division of Apprenticeship Standards; and,~~

~~(5) enforce requirements for apprentices to be paid not less than the applicable apprentice prevailing wage rate, while requiring the regular prevailing wage rate for any worker who is not duly registered as an apprentice or where apprentices have been employed in a ratio higher than permitted under Labor Code Section 1777.5(g).~~

~~(e) The Labor Compliance Program has the responsibility to demonstrate that it operates an effective Labor Compliance Program, and, as such, shall retain sufficient records for one year 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 one year after the acceptance of the public work, or one year after a final order pertaining to a notice of withholding of contract payments issued pursuant to Labor Code section 1771.6 upon which review was requested pursuant to Labor Code section 1742, whichever occurs last. These records should include information sufficient to demonstrate enforcement of a Labor Compliance Program consistent with subdivision (b) of Labor Code section 1771.5, and these regulations. Upon receipt of a written request from the Director or the Director's authorized designee, the Labor Compliance Program shall, within a reasonable time, not to exceed 30 days from the date of such receipt, furnish or otherwise make available the requested information to the Director.~~

~~NOTE: Authority cited: Section 1773.5, Labor Code. Reference: Sections 1742, 1771.5, and 1771.6,~~

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§16434. Duties of Labor Compliance Program. ~~[Option B]~~

(a) A Labor Compliance Program shall have a duty to the Director to enforce the requirements of Chapter 1 of Part 7 of Division 2 of the Labor Code and these regulations ~~in accordance with the Precedential prevailing wage decisions issued by the Director and~~ in a manner consistent with the practice of the Labor Commissioner. It is the practice of the Labor Commissioner to refer to the Director's ongoing advisory service of web-posted public works coverage determinations as a source of information and guidance in making enforcement decisions. **It is also the practice of the Labor Commissioner to be represented by an attorney in prevailing wage hearings conducted pursuant to Labor Code Section 1742(b) and sections 17201 – 17270 of Title 8 of the California Code of Regulations.**

(b) Upon receipt of a written complaint alleging that a contractor or subcontractor has failed to pay prevailing wages as required by the Labor Code, the Labor Compliance Program shall do all of the following:

- (1) Within 15 days after receipt of the complaint send a written acknowledgment to the complaining party that the complaint has been received and identifying the name, address, and telephone number of the investigator assigned to the complaint;
- (2) Within 15 days after receipt of the complaint, provide the affected contractor with the notice required under Labor Code section 1775(c) if the complaint is against a subcontractor;
- (3) Notify the complaining party in writing of the resolution of the complaint within ten days after the complaint has been resolved by the Labor Compliance Program;
- (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 Labor Compliance Program; 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 Labor Compliance Program but remains under review or in litigation before another entity.

(c) The duties of a Labor Compliance Program with respect to apprenticeship standards are as follows:

(1) Either the Awarding Body or the Labor Compliance Program acting on its behalf shall (A) inform contractors and subcontractors bidding public works about apprenticeship requirements, (B) send copies of awards and notices of discrepancies to the Division of Apprenticeship Standards as required under ~~s~~Section 1773.3 of the Labor Code, and (C) refer complaints and promptly report suspected violations of apprenticeship requirements to the Division of Apprenticeship Standards.

(2) The Labor Compliance Program shall be responsible for enforcing prevailing wage pay requirements for apprentices consistent with the practice of the Labor Commissioner, including (A) that any contributions required pursuant to Labor Code Section 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 Division of Apprenticeship Standards, and (D) **requiring that the regular prevailing wage rate be paid (i) to any worker who is not a duly registered apprentice and (ii) for all hours in excess of the maximum ratio** ~~that apprentices have not been employed in a ratio higher than~~ permitted under Labor Code Section 1777.5(g), **as determined at the conclusion of the employing contractor or subcontractor's work on the public works contract.**

(d) For each public work project subject to a Labor Compliance Program's 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. Appendix D following this section provides a suggested format for tracking and monitoring enforcement activities.

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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 Labor Code Section 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.

(e) The Labor Commissioner may provide, sponsor, or endorse training on how to enforce prevailing wage requirements, including but not necessarily limited to the subjects of (1) ascertaining prevailing wage requirements and rates from the Division of Labor Statistics and Research, (2) monitoring and investigation under ~~S~~section 16432 above, (3) enforcement responsibilities under this ~~S~~section and ~~S~~sections 16435 – 16439 below, and (4) procedural requirements and responsibilities as an enforcing agency under Labor Code Sections 1741 – 1743 and 1771.6 and ~~Title 8, California Code of Regulations ~~S~~sections 17201 – 17270 of Title 8 of the California Code of Regulations.~~

NOTE: Authority cited: Section 1773.5, Labor Code. Reference: Sections 1741 – 1743, 1771.5, and 1771.6, 1773.3, and 1777.5 through 1777.7, Labor Code; Title 8, California Code of Regulations sections 17201 – 17270.

Appendix D

Suggested Single Project Labor Compliance Review and Enforcement Report Form

Awarding Body: _____
Project Name: _____
Name of Approved Labor Compliance Program: _____
Bid Advertisement Date: _____
Acceptance Date: _____
Notice of Completion Recordation Date: _____

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Summary of Labor Compliance Activities

1. *Contract Documents Containing Prevailing Wage Requirements (Identify)*

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

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

4. *Certified Payroll Record Review*

a. *CPRs Received From:*

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

<hr/>	<hr/>
<hr/>	<hr/>
<hr/>	<hr/>

b. *Classifications identified in CPRs and applicable Prevailing Wage Determinations*

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

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

a. *Independent Confirmation of CPR Data*

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

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

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

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

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

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

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

* Use separate page(s) for explanation

6. *Complaints Received Alleging Noncompliance with Prevailing Wage Requirements.*

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

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_____	_____	*
_____	_____	*
_____	_____	*

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

7. *Requests for Approval of Forfeiture to Labor Commissioner*

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

8. *Litigation Pending Under Labor Code Section 1742*

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

9. (Check one): _____ *Final report this project* _____ *Annual report this project*

Authorized Representative for Labor Compliance Program

§16435. Withholding Contract Payments When Payroll Records are Delinquent or Inadequate ~~or When, After Investigation, It Is Established That Underpayment Has Occurred.~~

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

(b) "Contracts." Except as otherwise provided by agreement, only contracts under a single master contract, including a Design-Build contract, or contracts entered into as stages of a single project, may be the subject of withholding.

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(c) "Delinquent payroll records" means those not submitted on the date set in the contract.

(d) "Inadequate payroll records" are any one of the following:

(1) A record lacking any of the information required by Labor Code Section 1776;

(2) A record which contains all of the required information but is not certified, or is certified by someone who is not an agent of the contractor or subcontractor;

(3) A record remaining uncorrected for one payroll period; after the Labor Compliance Program 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 (1) percent of the entire Certified Weekly Payroll in dollar value and do not affect more than half the persons listed as workers employed on that Certified Weekly Payroll, as defined in Labor Code Section 1776 and ~~Title 8 CCR Section 16401~~ **of Title 8 of the California Code of Regulations.**

(e) ~~"Amount equal to the underpayment" is the total of the following determined by payroll review, audit, or admission of contractor or subcontractor:~~

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

~~(2) The difference between amounts paid on behalf of workers and the correct amounts of Employer Payments, as defined in Labor Code Section 1773.1 and determined to be 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 California Apprenticeship Council;~~

~~(5) Estimated penalties under Labor Code Sections 1775, 1776, and 1813.~~

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

(f) When contract payments are withheld under this section, the Labor Compliance Program shall provide the contractor and subcontractor, if applicable, with immediate written notice that includes all of the following: (1) a statement that payments are being withheld due to delinquent or inadequate payroll records, and that identifies what records are missing or states why records that have been submitted are deemed inadequate; (2) specifies the amount being withheld; and (3) informs the contractor or subcontractor of the right to request an expedited hearing to review the withholding of contract payments under Labor Code Section 1742, limited to the issue of whether the records are delinquent or inadequate or the Labor Compliance Program has exceeded its authority under this section.

(g) No contract payments shall be withheld solely on the basis of delinquent or inadequate payroll records after the required records have been produced.

(h) In addition to withholding contract payments based on delinquent or inadequate payroll records, penalties shall be assessed under Labor Code Section 1776(g) for failure to timely comply with a written request for certified payroll records. The assessment of penalties under Labor Code Section 1776(g) does require the prior approval of the Labor Commissioner under ~~S~~section 16436 of these regulations.

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NOTE: Authority cited: section 1773.5, Labor Code. Reference: sections 1729, 1771.5, ~~1773, 1773.1, 1775, and 1776~~, 1776, 1777.5, 1778, 1813 and 1815, Labor Code.

§16435.5 Withholding Contract Payments When, After Investigation, It Is Established That Underpayment Or Other Violation Has Occurred. [New]

(a) "Withhold" and "contracts" have the same meaning set forth in Sections 16435(a) and 16435(b) of these regulations.

(b) Where the violation is by a subcontractor, the general contractor shall be notified of the nature of the violation and reference made to its rights under Labor Code Section 1729.

(c) "Amount equal to the underpayment" is the total of the following determined by payroll review, audit, or admission of contractor or subcontractor:

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

(2) The difference between amounts paid on behalf of workers and the correct amounts of Employer Payments, as defined in Labor Code Section 1773.1 and determined to be 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 California Apprenticeship Council;

(5) Estimated penalties under Labor Code Sections 1775, 1776, and 1813.

(d) The withholding of contract payments when, after investigation, it is established that underpayment or other violations have occurred requires the prior approval of the Labor Commissioner under Sections 16436 and 16437 of these regulations.

NOTE: Authority cited: section 1773.5, Labor Code. Reference: sections 1729, 1771.5, 1773, 1773.1, 1775, 1776, 1777.5, 1778, 1813 and 1815, Labor Code.

§16436. Forfeitures Requiring Approval by the Labor Commissioner.

~~(a) "Forfeitures" are the amounts of unpaid penalty and wage money assessed by the Labor Compliance Program for violations of the prevailing wage laws. For purposes of this section and section 16437 below, "forfeitures" means the amount of wages, penalties, and forfeitures assessed by the Labor Compliance Program and proposed to be withheld pursuant to Labor Code Section 1771.6(a), and includes the following: (1) the difference between the prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate by the contractor or subcontractor; and (2) penalties assessed under Labor Code Sections 1775, 1776 and 1813.~~

~~(b) "Failing to pay the correct rate of prevailing wages" means those public works violations which the Labor Commissioner has exclusive authority to approve before they are recoverable by the Labor Compliance Program, and which are appealable under Labor Code Sections 1771.6 and 1742. Regardless of what are defined as "prevailing wages" in contract terms, non-compliance with the following are failures to pay prevailing wages.~~

~~(1) Nonpayment of items defined as "Employer Payments" and "General Prevailing Rate of Per Diem Wages" in Title 8 CCR Section 16000 and Labor Code Sections 1771 and 1773.1.~~

~~(2) Payroll records required by Labor Code Section 1776.~~

~~(3) Labor Code Section 1777.5, but only insofar as the failure consisted of paying apprentice wages lower than the journey person rate to a person who is not an apprentice as defined in Labor Code Section 3077, working under an apprentice agreement in a recognized program.~~

~~(4) Labor Code Section 1778, Kickbacks.~~

~~(5) Labor Code Section 1779, Fee for registration.~~

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~~(6) Labor Code Sections 1813, 1815, and Title 8 CCR Section 16200(a)(3)(F) overtime for work over 8 hours in any one day or 40 hours in any one week.~~

If the aggregate amount of forfeitures assessed as to a contractor or subcontractor is less than \$1000.00, the forfeitures shall be deemed approved by the Labor Commissioner upon service and the Labor Commissioner's receipt of copies of the following: (1) the Notice of Withholding of Contract Payments authorized by Labor Code Section 1771.6(a); (2) an Audit as defined in section 16432(e) of these regulations, and (3) a brief narrative identifying the Bid Advertisement Date of the contract for public work and summarizing the nature of the violation, the basis of the underpayment, and the factors considered in determining the assessment of penalties, if any, under Labor Code Section 1775.

(c) For all other forfeitures, approval by the Labor Commissioner shall be requested and obtained in accordance with section 16437 below.

NOTE: Authority cited: sections 1773.5, Labor Code. Reference: sections ~~1742, 1771, 1771.5, 1771.6, 1773.1, 1775, 1777.5, 1776, 1778, 1779, and 1813, 1815 and 3077~~, Labor Code.

§16437. Determination of Amount of Forfeiture by the Labor Commissioner.

(a) Where the Labor Compliance Program requests a determination of the amount of forfeiture, the request shall include a file or report to the Labor Commissioner which contains at least the following information:

(1) Whether the public work has been accepted by the awarding body and whether a valid notice of completion has been filed, ~~and 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) [Option A] Evidence that an audit or investigation under Section 16432 of these regulations, occurred, and a copy of any audit summary setting forth the amounts of unpaid wages and applicable penalties;~~

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~~(4) [Option B]~~ Evidence of violation obtained under section 16432 of these regulations and a copy of the Audit prepared in accordance with section 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 do so or failed to convince the Labor Compliance Program of its position;

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

(7) Where the Labor Compliance Program seeks only wages or a penalty less than \$50 per day as part of the forfeiture because the contractor or subcontractor has successfully contended that the cause of the violation was a good faith mistake that was promptly corrected when brought to the contractor or subcontractor's attention, the file should include the evidence as to the contractor or subcontractor's knowledge of his or her obligation, including the program's communication to the contractor or subcontractor of the obligation in the bid invitations, at the prejob conference 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 Labor Code Section 1775(a);

(8) The previous record of the contractor and subcontractor in meeting ~~his or her~~ their prevailing wage obligations; and

(9) Whether the Labor Compliance Program has been granted ~~initial, extended initial or final approval on only an interim or temporary basis under sections 16425 or 16426 of these regulations~~ above or whether it has been granted extended approval under section 16427 ~~of these~~

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regulations above.

(b) 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 Labor Code Section 1741.

(c) A copy of the recommended forfeiture and the file or report shall be served on the contractor and subcontractor at the same time as it is sent to the Labor Commissioner. The Labor Compliance Program 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.

(d) The Labor Commissioner shall affirm, reject, or modify the forfeiture in whole or in part as to ~~penalty and/or~~ the wages and penalties due.

(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 Section 16427 of these regulations~~Labor Compliance Programs with initial approval or an extension of initial approval pursuant to Section 16425 or 16426 of these regulations,~~ on the date the Labor Commissioner serves by first class mail, on the Labor Compliance Program, on the Awarding Body if different, 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.

(2) For programs with ~~final approval~~ extended authority under section 16427 above of these regulations, approval is effective 20 days after the requested forfeitures are served upon the Labor Commissioner, unless the Labor Commissioner serves a notice upon the parties, within

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**** Additions to original proposal are in bold type and double-underlined, except for new Appendix E, which is in a separate attachment. Deletions from original proposal are double-lined out.**

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.

NOTE: Authority cited: Section 1773.5, Labor Code. Reference: Sections 1771.5 and 1775, Labor Code.

Appendix E

Suggest Format for Request for Approval of Forfeiture

[Separate attachment]

§16438. Deposits of Penalties and Forfeitures Withheld.

(a) Where the involvement of the Labor Commissioner has been limited to a determination of the actual amount of penalty, forfeiture or underpayment of wages, and the matter has been resolved without litigation by or against the Labor Commissioner, the Labor Compliance Program shall deposit penalties and forfeitures with the Awarding Body.

(b) Where collection of fines, penalties or forfeitures results from administrative proceedings or court action to which the Labor Commissioner and Awarding Body or its Labor Compliance Program are both parties, the fines, penalties or forfeitures shall be divided between the general funds of the state and the Awarding Body, as the Hearing Officer or court may decide.

(c) All penalties recovered in administrative proceedings or court action brought by or against the Labor Commissioner and to which the Awarding Body or its Labor Compliance Program is not a party, shall be deposited in the general fund of the state.

(d) 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 Labor Code Section 96.7.

NOTE: Authority cited: Section 1773.5, Labor Code. Reference: Sections 96.7, 1771.6 and 1775, Labor Code.

§16439. Request for Review of a Labor Compliance Program Enforcement Action; Settlement Authority.

(a) A contractor or subcontractor may request a settlement meeting pursuant to Labor Code ~~§~~Section 1742.1(b) and may request review of a Labor Compliance Program enforcement action in accordance with Labor Code Sections 1771.6(b) and 1742 and the regulations found at ~~Title 8 C.C.R.~~ sections 17201-17270 **of Title 8 of the California Code of Regulations.**

The Labor Compliance Program shall have the rights and responsibilities of the Enforcing Agency (as defined in ~~8 C.C.R.~~ section 17202(f) **of Title 8 of the California Code of Regulations**), in responding to such a request for review, including but not limited to 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.

(b) If a contractor or subcontractor seeks review of a Labor Compliance Program enforcement action, the Labor Commissioner may intervene to represent the Awarding Body, or to enforce relevant provisions of the Labor Code consistent with the practice of the Labor Commissioner, or both.

(c) Except in cases where the Labor Commissioner has intervened pursuant to subpart (b), the Labor Compliance Program shall have the authority to prosecute, settle, or seek the dismissal of any Notice of Withholding of Contract Payments issued pursuant to Labor Code

Section 1771.6 and any review proceeding under Labor Code Section 1742, without any further need for approval by the Labor Commissioner. Whenever a Labor Compliance Program settles in whole or in part or seeks and obtains the dismissal of a Notice of Withholding of Contract Payments or a review proceeding under Labor Code Section 1742, the Labor Compliance Program shall document the reasons for the settlement or request for dismissal and shall make that documentation available to the Labor Commissioner upon request.

NOTE: Authority cited: Sections 54, 55, 1742(b), and 1773.5, Labor Code. Reference: Sections 1742, 1742.1(b), and 1771.6, Labor Code.

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