

July 15, 2004

REVISIONS TO
PROPOSED AMENDMENTS TO REGULATIONS
RELATING TO LABOR COMPLIANCE PROGRAMS

CALIFORNIA CODE OF REGULATIONS

TITLE 8, CHAPTER 8

Amending SUBCHAPTER 4

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Subchapter 4. Awarding Body Labor Compliance Programs

Article 1. Applicable Dates for Enforcement of Awarding Body Labor Compliance Programs Operation of Labor Compliance Program and Contracts Subject to Labor Compliance Program Jurisdiction

§1643021. 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, ~~at which time~~ federal and state labor law requirements ~~applicable to the contract~~ 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 aAwarding bBody ~~at times designated in the contract or~~ within 10 days of request by the aAwarding bBody. ~~The awarding body may create a form meeting the minimum requirements of (a) hereinafter "Certified Weekly Payroll."~~

Use of the current version of DIR's "Public Works Payroll Reporting Form" (A-1-131) and Statement of Employer Payments (PW26) constitutes full compliance with this requirement by the aAwarding bBody. ~~A copy of this suggested form follows Title 8 CCR Section 16500~~These 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)(b) A private entity that is approved by the Director under Labor Code §1771.7 or 1771.8 to operate a Labor Compliance Program and that operates a Labor Compliance Program pur-

suant 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 personnel employees and consultants who participate in making government decisions under Title 2 California Code of Regulations Section 18701, and (2) maintaining, disclosing, or keeping confidential personnel information, 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 authority of an Awarding Body from taking cognizance of prevailing wage violations under Section 1726 of the Labor Code and taking any appropriate action pursuant to and in accordance with that authority.

NOTE: Authority cited: Section 1773.5, Labor Code. Reference: Sections 5000 et seq., 5500 et seq., 6000 et seq., and 6700 et seq., Business and Professions Code; Section 1798 et seq., Civil Code; Sections 6250 et seq., 6500 et seq. and 87100 et seq., Government Code; Sections 1726, 1771.5(b), 1771.7, 1771.8, 1771.9, and 1776 Labor Code; Title 2, California Code of Regulations section 18701; and Title 8, California Code of Regulations Section 16500.

HISTORY

*** Proposed new language is underlined. Proposed deletions to existing language are lined out.**

**** Additions to original proposal are double-underlined; except new Appendix C, which is italicized. Deletions from original proposal are double-lined out.**

1. Renumbering of former section 16430 to new section 16421 including amendment of section heading, amending language of subpart (a)(1)-(3), adding subparts (b) through (d), and revising Appendix A, filed - -2004; operative - -2004 (Register , No.). For prior history see Register 92, No. 13.

Appendix A

Suggested Checklist of Labor Law Requirements to Review at Prejob Conference, Section 1643021, 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

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Labor Code Section 1778;

(7) The prohibition against accepting fees for registering any person for public work under Labor Code 1779; or for filling work orders on public works under Labor Code Section 1780;

(8) The requirement to list all subcontractors under Government Section 4100 et seq;

(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 Section 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 requirement to provide affirmative action for women and minorities as required in the Public Contracts Code and in the contract;~~

~~(14)~~ The federal prohibition against hiring undocumented workers, and the requirement to secure proof of eligibility/citizenship from all workers.

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

~~**Drafter's Comment:** Labor Code §§1771.7 and 1771.8 introduced two concepts that were not clearly contemplated in the original standards governing labor compliance programs: (1) the operation of a limited labor compliance program for bond money projects only that would not enjoy the exemption provided by Labor Code §1771.5(a); and (2) contracting out with a third party to operate a Labor Compliance Program on behalf of the Awarding Body. In light of early feedback on the subject matter of these proposals (see Government Code §11346.45), these draft amendments recognize that express authority to contract out for the operation of a Labor Compliance Program is found only in the language of Labor Code §§1771.7 and 1771.8. We invite comment and analysis on whether only a limited program operating pursuant to one of these sections would be able to contract out for operation of its program, or whether any Awarding Body, including one operating a general purpose Labor Compliance Program with the broader exemption provided by Labor Code §1771.5(a), would also be able to do so. Additionally, we invite comment and analysis on whether and the extent to which Awarding Bodies may use the vehicle of a Joint Powers Authority (see Government Code §§6500 et seq.) to operate a Labor Compliance Program on behalf of more than one entity.~~

§164252. 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 aAwarding bBody unless and until after the Labor Compliance

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Program has been approved by the Director ~~received initial or final approval under these regulations pursuant to this subchapter.~~

(b) Contracts for which the Date of Notice or the Call for Bids ~~are~~ 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 ~~execution~~ 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 ~~pursuant to~~ 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 ~~execution~~ of the contract.

(d) If the Director revokes approval of a Labor Compliance Program, the Director shall give notice to the ~~a~~ Awarding ~~b~~ Body specifying enforcement responsibilities, including with respect to cases ~~enforcement actions~~ pending hearing, as of the date of revocation.

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

(1) Notify the Director of its intention and the effective date of the termination;

(2) Notify the contractor(s) and the ~~DLSE~~ 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 general 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 ~~a~~Awarding ~~b~~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.

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

HISTORY

1. Renumbering of former section 16425 to new section 16422 with technical nonsubstantive changes to text, filed - -2004; operative - -2004 (Register __, No. __). For prior history see Register 92, No. 13.

§16423. Approved Labor Compliance Program Required for 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 ~~maintains~~ initiates and ~~operates~~ 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 (Proposed Part 68.2 (commencing with Section 100800) of the Education Code [subject to voter approval in 2004]).

(3) Water Security, Clean Drinking Water, Coastal Beach and 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].

(b) The governing board of any Awarding Body that is required to maintain and operate 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.

(c) 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 ~~maintains~~ initiates and ~~operates~~ enforces a Labor Compliance Program for all public works projects in which the Awarding Body participates.

NOTE: Authority cited: Section 1773.5, Labor Code. Reference: Sections 100600, et seq. and proposed Sections 100800 et seq., Education Code; Sections 1771.5, 1771.7, ~~and~~ 1771.8, and 1771.9 Labor Code; proposed Sections 2704 et seq., Streets and Highways Code; and Sections 79500 et seq., Water Code; Title 8, California Code of Regulations Sections 16425 - 16427.

HISTORY

1. New section filed - -2004; operative - -2004 (Register __, No. __).

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

§16424. Application for Approval.

An application for Initial Approval of Awarding Body's Labor Compliance Program or for Approval of a Third Party Labor Compliance Program shall include the information specified either in Section 16425(a) or in 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; Title 8, California Code of Regulations Sections 16425 and 16426.

HISTORY

1. New section filed - -2004; operative - -2004 (Register __, No. __).

§164265. Initial Approval of Awarding Body's Labor Compliance Program.

(a) An aAwarding bBody seeking approval of a 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:

(1) Experience and training of the aAwarding bBody'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 average number of public works contracts the aAwarding bBody annually administers;
- (3) Whether the Labor Compliance Program is a joint or cooperative venture among aAwarding bBodies, and how the resources and expanded responsibilities of the Labor Compliance Program compare to the aAwarding bBodies involved;
- (4) The aAwarding bBody'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 aAwarding bBody; and
- (7) The method by which the aAwarding bBody will transmit notice to the Labor Commissioner of ~~willful~~ violations as defined in which may lead to debarment under Labor Code Section 1777.1(d).
- (b) The Director shall notify the aAwarding bBody within 30 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 ~~requested in writing and~~ granted in writing by the Director ~~at least thirty days prior to the anniversary date of the approval~~. 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.

(d) The Director will maintain a list of all initially approved Labor Compliance Programs for distribution to interested parties upon request.

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.

HISTORY

1. Renumbering of former section 16426 to new section 16425 including amendment revising language of subparts (a)(1), ~~and~~ (a)(5), and (c) and making other non-substantive changes, filed - - - 2004 (Register __, No. __).

§16426. 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 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:

(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 willful violations as defined in Labor Code Section 1777.1(d); and
- (8) Awareness of the rights and responsibilities imposed on the Labor Compliance Program as an agent of a governmental agency under Section 16421(b)(c) above and the existence of procedures designed to inform personnel of the Labor Compliance Program of these rights and responsibilities and to insure their 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.
- (b) The Director shall notify the applicant within 30 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.

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(c) Initial approval of a third party Labor Compliance Program shall automatically expire one year after approval unless an extension is requested in writing and granted in writing by the Director at least thirty days prior to the anniversary date of the approval.

(d) The Director will maintain a list of all initially approved third party Labor Compliance Programs 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, ~~and has also provided~~ 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.

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; Title 8, California Code of Regulations Section 16421(c); Section 175a, Title 29 United States Code.

HISTORY

1. New section [replacing former section with same number] filed - -2004 (Register __, No. __).

~~*Drafter's Comment: This is similar to the preexisting rule for conventional Awarding Body Labor Compliance Programs with specific variations pertaining to conflict of interest problems posed by third party operators who may be sponsored by parties with distinct interests in public works contracts and to the third party operator's understanding of its role as an agent of the Awarding Body.*~~

~~*Proposed subpart (e) pertains to another question on which we invite comment, and that is the extent to which an approval given to a third party provider should automatically extend to any Awarding Body that contracts with that provider. A third party Labor Compliance Program which may be proper and effective for a given Awarding Body or consortium of Awarding Bodies may be unable to expand its scope of operations to support additional Awarding Bodies that may happen to be larger or from a more remote geographical location or be less supportive of prevailing wage enforcement. The new relationship might also pose conflict of interest issues that were not present among the original contracting parties.*~~

§16427. Final Approval.

(a) An Awarding Body or third party entity which has operated a Labor Compliance Program with active enforcement responsibilities for at least eleven~~11~~ continuous months after initial approval may apply to the Director for final approval. The applicant ~~awarding body~~ bears the burden of producing evidence that it meets the criteria in subpart (b).

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

(c) The Director shall notify the ~~awarding body~~ applicant within 30 days of the receipt of a request for final approval that final approval is granted and the effective date of final approval, or that the request for final approval is denied, the reason for the denial and the status of the Labor Compliance Program ~~program~~.

(d) An Labor Compliance Program ~~awarding body~~ which has received final approval ~~of its~~ LCP may enter into an agreement with the Labor Commissioner ~~which may provide~~ providing for different procedures and for securing approval of forfeitures in a manner different from that than those set forth in Section 16437 below, and for alternate procedures for appeals of enforcement actions to the Director.

(e) The Director will maintain a list of all finally approved Labor Compliance Programs, for distribution to interested parties upon request. The Director may agree to alternative reporting formats under Section 16431 of these regulations, 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; and Title 8, California Code of Regulations Sections 16431 and 16437.

HISTORY

1. New section filed 2-20-92; operative 3-23-92 (Register 92, No. 13). 2. Amendment revising subpart (a) and making other nonsubstantive technical changes filed - -2004; operative - -2004 (Register __, No. __).

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§16428. Revocation of ~~Final~~ Approval.

(a) The Director may revoke ~~final~~ approval of a Labor Compliance Program ~~only~~ after giving due notice ~~to the awarding body~~, conducting a hearing if appropriate, and finding cause for revocation. ~~(1)~~ Cause for revocation of ~~final~~ approval includes, but is not limited to:

~~(A)~~ (1) Failure of the ~~awarding body~~ 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;

~~(B)~~ (2) Failure of the ~~awarding body~~ 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 contract 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.

(b) Interested parties may request the Director to revoke ~~final~~ approval of a Labor Compliance Program. A request for revocation shall include evidence of failure of the ~~awarding body~~ 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) ~~Final 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 (a). A copy of the request for revocation shall be provided to the ~~a~~Awarding ~~b~~Body as part of the notice required under subdivision (a).

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

(3) Revocation of ~~final~~ approval of a Labor Compliance Program based on a request by an interested party is solely within the discretion of the Director. The duty ~~of an awarding body to carry out its~~ 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 ~~of an awarding body's~~ 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 ~~notify~~ give notice of the decision and of the reasons therefore by mail to the Labor Compliance Program, any aAwarding bBody or Joint Powers Authority that has con-

tracted with the Labor Compliance Program pursuant to Section 16421(b) above, and ~~the any~~
interested party that requested ~~ing party of the decision and of the reasons therefore by mail~~
revocation.

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

(e) Nothing in this Section shall be construed as requiring the Director either to extend any term of initial approval granted pursuant to Sections 16425 or 16426 above or to grant Final Approval except in accordance with Section 16427(b) above.

NOTE: Authority cited: Section 1773.5, Labor Code. Reference: Sections 1742(b), 1771.5, 1775(a), and 1776(g), Labor Code; Title 8, California Code of Regulations Sections 16304, 16421, 16431 and 17201 - 17270.

HISTORY

1. New section filed 2-20-92; operative 3-23-92 (Register 92, No. 13). 2. Amendment changing subparts (a)(1)(A) and (B) to (a)(1) and (2), adding subparts (a)(3) and (a)(4), amending subparts (b)(3) and (c) and making other nonsubstantive changes filed - -2004; operative - -2004 (Register No.).

Article 3. Notice and Components of LCP

§16429. Notice of Labor Compliance Program Approval.

(a) Notice of initial or final approval of an aAwarding bBody'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 16100(b).

(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 ~~that whether~~ the limited exemption from prevailing wages pursuant to Labor Code Section 1771.5(a) applies to ~~the~~ 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, ~~if different from the awarding body.~~

NOTE: Authority cited: Section 1773.5, Labor Code. Reference: Section 1771.5, Labor Code; Title 8, California Code of Regulations Section 16100(b).

HISTORY

1. New section filed 2-20-92; operative 3-23-92 (Register 92, No. 13). 2. Amendments making non-substantive changes filed - -2004; operative - -2004 (Register __, No. __).

~~§16430. Components of LCP.~~

~~Former Section 16430 deleted. See new Section 16421 filed - -2004; operative - -2004 (Register __, No. __).~~

Article 3. Reports and Audits

*** Proposed new language is underlined. Proposed deletions to existing language are lined out.**

**** Additions to original proposal are double-underlined; except new Appendix C, which is italicized. Deletions from original proposal are double-lined out.**

§16431. Annual Report.

(a) The ~~awarding body~~ Labor Compliance Program shall submit to the Director an annual report on the its operation of its LCP within 60 days after the close of its ~~fiscal year; provided that, an annual report shall, or accompany its any request for an extension of initial approval under Section 16425(c) above,~~ whichever comes first annual reporting period, as defined in subpart (d) below. The annual report shall contain, at the minimum, the following information:

- (1) Number of contracts awarded or monitored or enforced, and their total value;
- (2) If applicable, ~~t~~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) For a private entity operating a third party Labor Compliance Program, (A) a certification of compliance by its personnel with conflict of interest disclosure requirements under 2 C.C.R. Section 18701, and (B) a current statement 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) At its option, a Labor Compliance Program that monitors and enforces ten or fewer projects may submit copies of its Single Project Labor Compliance Review and Enforcement Report Form (8 C.C.R. Section 16434 Appendix C below) for each project monitored or enforced during the annual reporting period in lieu of the information specified in subparts (a)(1), (3), and (4) above.

(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 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; and Title 2 California Code of Regulations section 18701, and Title 8 California Code of Regulations Sections 16425 and 16426(a).

HISTORY

1. New section filed 2-20-92; operative 3-23-92 (Register 92, No. 13). 2. Amendment revising subparts (a), (a)(1), and (a)(2), adding subparts (a)(5) and (c), and making other nonsubstantive changes filed - -2003; operative - -2003 (Register , No.).

§16432. Review and Audits of Payroll Records.

(a) The payroll records described in Labor Code Section 1771.5(b)(3) and (4) shall be reviewed at least monthly, and ~~Audits may~~ shall be conducted when deemed necessary by the ~~awarding body~~ Labor Compliance Program and ~~shall be conducted~~ 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 B presumptively demonstrates sufficiency.

NOTE: Authority cited: Section 1773.5, Labor Code. Reference: Sections 224, 226, 1771.7, 1773.1, 1773.2, 1776, 1777.5, 1778, 1810, 1815, 1860 and 1861, Labor Code; and Title 8, California Code of Regulations Sections 16200 and 16432.

HISTORY

1. New section and Appendix filed 2-20-92; operative 3-23-92 (Register 92, No. 13). 2. Amendment making nonsubstantive changes filed - -2004; operative - -2004 (Register __, No. __).

Appendix B

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

An audit record is sufficiently detailed to “verify “compliance with the requirements of Chapter²²1, ~~Public Works~~, 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' 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 journeyman hours to be performed and the number of apprentices to be employed; whether apprentices have been requested, and whether the request has been met; whether the program sponsor knows of any amounts 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 journeyman rate are apprentices registered with that program and working under apprentice agreements approved by the Division of Apprenticeship Standards;

*** Proposed new language is underlined. Proposed deletions to existing language are lined out.**

**** Additions to original proposal are double-underlined; except new Appendix C, which is italicized. Deletions from original proposal are double-lined out.**

(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 ~~Title 8 CCR Section 16000~~ Labor 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 ~~Section 16000 of these regulations~~ 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 La-

bor Code Section 1773.2 was to be specified in the call for bids, made available in its principal office and posted.

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

§16433. Limited Exemption.

(a) As provided in Labor Code Section 1771.5(a), an ~~a~~Awarding ~~b~~Body ~~having a~~ which operates an approved Labor Compliance Program for all public works projects in which the Awarding Body participates ~~approved by the Director in accordance with these regulations~~ 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.

HISTORY

1. New section filed 2-20-92; operative 3-23-92 (Register 92, No. 13). 2. Amendment revising subparts (a) and (b) filed - -2004; operative - -2004 (Register __, No. __).

~~*Drafter's Comment:* Stats. 2001, Chap. 938, §2 (SB 975) added the word "installation" to section 1720(a)(1) of the Labor Code [defining public work] but not to section 1771.5(a) [specifying thresholds for limited exemption for general purpose Labor Compliance Programs]. An interpretive regulation, putting installation work under one threshold or another, is appropriate because either the \$15,000 or the \$25,000 exemption level must be specified in the call for bids and contract or purchase order. We invite comment and analysis as to which level is most appropriate.~~

Article 5. Enforcement

§16434. Duty of Awarding Body Labor Compliance Program.

(a) ~~An awarding body having an initially or finally approved 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 DLSE the Labor Commissioner, as set forth in Divisions 2 and 3 of the Labor Code, and published regulations thereunder, where substantive standards are not set out by regulations under this Title 8, group 4.~~

* Proposed new language is underlined. Proposed deletions to existing language are lined out.

** Additions to original proposal are double-underlined; except new Appendix C, which is italicized. Deletions from original proposal are double-lined out.

(b) 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 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 ~~training fund~~ 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, and (c) that workers listed and paid as apprentices on the certified payroll records are duly registered as apprentices with the Division of Apprenticeship Standards.

(c) 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. However, an Awarding Body Labor Compliance Program which initiates and enforces a Labor Compliance Pro-

gram for all public works projects in which the Awarding Body participates may enter into an agreement with the Director for a different manner or format for maintaining such information. Compliance records for a project shall be retained until the later of (1) five years 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.

(d) The Labor Commissioner shall provide training on how to enforce prevailing wage requirements. Such training shall include but not necessarily be limited to the subjects of (1) ascertaining prevailing wage requirements and rates from the Division of Labor Statistics and Research, (2) conducting reviews and audits under Section 16432 above, (3) enforcement responsibilities under this Section and 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 or Regulations Sections 17201 – 17270. The Labor Commissioner may provide such training by making it available in the form of streaming video on the Department of Industrial Relations’ web site.

(e) Completion of an accurate and thorough Labor Compliance Report for each project in the form set out in Appendix C and annual participation in training provided pursuant to subpart (d) by the employees and consultants who participate in making government decisions on behalf of the Labor Compliance Program shall demonstrate presumptive compliance with subparts (a) and (c) of this Section.

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.

HISTORY

1. New section filed 2-20-92; operative 3-23-92 (Register 92, No. 13). 2. Amendment revising subpart (a) and adding subparts (b) and (c) and new Appendix C filed - -2004; operative - -2004 (Register __, No. __).

Appendix C

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: _____

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. *Certified Payroll Record Review*

a. *CPRs Received From:*

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

*** Proposed new language is underlined. Proposed deletions to existing language are lined out.**

**** Additions to original proposal are double-underlined; except new Appendix C, which is italicized. Deletions from original proposal are double-lined out.**

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

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

4. *Further investigation resulting from CPR review and worker notification:*

a. *Independent CPR Data Confirmation*

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

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

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

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

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

* Proposed new language is underlined. Proposed deletions to existing language are lined out.

** Additions to original proposal are double-underlined; except new Appendix C, which is italicized. Deletions from original proposal are double-lined out.

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

<u>Contractor/Subcontractor</u>	<u>Additional amounts Paid to Workers</u>	<u>Additional Training Fund</u>	<u>Explanation</u>
_____	_____	_____	*
_____	_____	_____	*
_____	_____	_____	*

** Use separate sheet(s) for explanation*

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

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

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

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

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

<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>
_____	_____

*** Proposed new language is underlined. Proposed deletions to existing language are lined out.**

**** Additions to original proposal are double-underlined; except new Appendix C, which is italicized. Deletions from original proposal are double-lined out.**

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

Authorized Representative for Labor Compliance Program

Appendix C [Alternative Form]

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: _____

Summary of Labor Compliance Activities

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

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

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

4. *Certified Payroll Record Review*

a. *CPRs Received From:*

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

b. *Attach actual CPRs and classifications and apprenticeships relevant to this project.*

5. *Certified Payroll Record Investigation /Audit steps resulting from CPR inaccuracy and, if necessary, worker notification:*

a. *CPR's that, upon review, warranted an audit*

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

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

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

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

c. *Independent CPR Data Confirmation as Result of Investigation/Audit*

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

*** Proposed new language is underlined. Proposed deletions to existing language are lined out.**

**** Additions to original proposal are double-underlined; except new Appendix C, which is italicized. Deletions from original proposal are double-lined out.**

d. *Recovered/Unpaid Wage Payments/Training Fund Contributions Resulting from Investigation/Audit of CPRs*

<u>Contractor/Subcontractor</u>	<u>Recovered Unpaid Amounts Paid to Workers</u>	<u>Additional Training Fund</u>	<u>Explanation</u>
_____	_____	_____	*
_____	_____	_____	*
_____	_____	_____	*

* Use separate sheet(s) for explanation

e. *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>
_____	_____	_____
_____	_____	_____
_____	_____	_____

f. *Training Contributions (California Apprenticeship Council or Other Approved Apprenticeship Program) Confirmation*

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

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

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

* Proposed new language is underlined. Proposed deletions to existing language are lined out.

** Additions to original proposal are double-underlined; except new Appendix C, which is italicized. Deletions from original proposal are double-lined out.

7. *Litigation Pending Under Labor Code Section 1742*

Contractor/Subcontractor

DIR Case Number

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

Authorized Representative for Labor Compliance Program

[Drafter's Comment: Appendix C is being provided in two alternative forms, with some differences in order, terminology, and how to document classification information. The expectation is that a single form will be adopted, and comments are invited on whether and why the first form, the alternative form, some combination of the two, or no form is preferable.]

§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 ~~a~~Awarding ~~b~~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.~~ 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. Where the violation is for delinquent or inadequate payroll records by a subcontractor, the amount withheld shall not exceed the amount remaining due to the subcontractor under its subcontract.

* Proposed new language is underlined. Proposed deletions to existing language are lined out.

** Additions to original proposal are double-underlined; except new Appendix C, which is italicized. Deletions from original proposal are double-lined out.

(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.

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

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

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

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

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

(e) "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 ~~Title 8 CCR Section 16000~~ 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 ~~Title 8 CCR Section 16000~~ 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, ~~1777.7~~ and 1813.

NOTE: Authority cited: section 1773.5, Labor Code. Reference: sections 1729, 1775, 1776, 1777.5, ~~1777.7~~, 1778, 1813 and 1815 Labor Code; and 8 CCR sections 16000 and 16401.

HISTORY

1. New section filed 2-20-92; operative 3-23-92 (Register 92, No. 13). 2. Amendment revising subparts (a) and (b) and incorporating former Section 16435.5 as new subpart (e) filed - -2004; operative - -2004 (Register __, No. __).

*** Proposed new language is underlined. Proposed deletions to existing language are lined out.**

**** Additions to original proposal are double-underlined; except new Appendix C, which is italicized. Deletions from original proposal are double-lined out.**

§16435.5. Withholding Contract Payments Equal to the Amount of Underpayment and Applicable Penalties When, After Investigation, It Is Established That Underpayment Has Occurred.

(a) ~~"Withhold"~~ as defined in Section 16435(a) of these regulations.

(b) ~~"Contracts"~~ as defined in Section 16435(b) of these regulations.

(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 Title 8 CCR Section 16000, 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 Title 8 CCR Section 16000 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, 1777.7 and 1813.~~

HISTORY

1. New section filed 2-20-92; operative 3-23-92 (Register 92, No. 13). Former Section 16435.5 deleted. See Section 16435, new subsection (e) filed - -2004; operative - -2004 (Register __, No. __).

§16436. Forfeitures Requiring Approval by the Labor Commissioner.

(a) "Forfeitures" are the amounts of unpaid penalty and wage money assessed by the ~~award-~~
~~ing body~~ Labor Compliance Program for violations of the prevailing wage laws, ~~whether col-~~
~~lected by withholding from the contract amount or by suit under the contract, or provisions of~~
~~this Chapter.~~

(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 ~~by the contractor or sub-~~
~~contractor in court or before the Director~~ under Labor Code Sections ~~1771.7~~ 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.

(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.

NOTE: Authority cited: sections 1773.5, Labor Code. Reference: sections 1742, 1771, 1771.5, 1773.1, 1777.5, 1776, 1778, 1779, 1813, 1815 and 3077, Labor Code; and Title 8, California Code of Regulations Sections 16000 and 16200(a)(3)(F).

HISTORY

1. New section filed 2-20-92; operative 3-23-92 (Register 92, No. 13). 2. Amendment revising subparts (a), (b), and (b)(1) filed - -2004; operative - -2004 (Register __, No. __).

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

(a) Where the Labor Compliance Program ~~of the awarding body~~ 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) ~~The deadline by which contract acceptance of filing of a notice of completion, under Labor Code Section 1775, plus 90 days, will occur date that the public work was accepted, and the date that a notice of completion was filed~~ 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;

(2) Any other deadline which if missed would impede collection;

(3) Evidence of violation, in narrative form;

(4) Evidence that an "audit" or "investigation," as defined in Section 16432 of these regulations, occurred;

(5) Evidence that before the forfeiture was sent to the Labor Commissioner (A) the contractor and subcontractor was 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, inadvertence, or neglect, and (B) the contractor and subcontractor either did not do so; or failed to convince the ~~awarding body~~ Labor Compliance Program of its position;

(6) Where the Labor Compliance Program ~~of the awarding body~~ seeks not only ~~amounts of~~ 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, inadvertence, or neglect 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 ~~of the awarding body~~ seeks only wages or a penalty less than \$50 per day as part of the forfeiture, ~~and because~~ the contractor or subcontractor has successfully contended that the cause of the violation was a good faith mistake, inadvertence, or neglect that was promptly corrected when brought to the contractor or subcontractor's attention, ~~then~~ 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.

(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 or, if that deadline has passed, not less than ~~90~~ 30 days before the expiration of the ~~deadline to file suit under~~ limitations period set forth in Labor Code Section 1775.1741.

(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

~~awarding body~~ 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. ~~Along with the copy served on the contractor shall be a notice stating all deadlines and rights of the contractor to contest the amount of forfeiture. A Notice of Deadlines in the format set out in Appendix C will presumptively fulfill the requirements of this subsection;~~

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

(e) The Labor Commissioner's determination of the forfeiture is effective on one of the two following dates:

(1) For 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 ~~political subdivision~~ Labor Compliance Program, on the Awarding Body if different, ~~and~~ 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 ~~or no more than 30 days after the notice of completion has been filed.~~

(2) For programs with final approval, approval is effective 20 days after the requested forfeitures are served upon the Labor Commissioner, unless the Labor Commissioner serves a notice upon the parties, within that time period, that this forfeiture request is subject to further review. For such programs, a notice that approval will follow such a procedure will be included in the transmittal of the forfeiture request to the contractor. If the Labor Commissioner notifies the parties of a decision to undertake further review, the Labor Commissioner's final approval, modification or disapproval of the proposed forfeiture shall be served within 30 days of the date of notice of further review. ~~receipt of the proposed forfeiture or no more than 30 days after the notice of completion has been filed, unless some other procedure has been adopted pursuant to 8 CCR Section 16427(d).~~

NOTE: Authority cited: Section 1773.5, Labor Code. Reference: Sections 1771.5 and 1775, Labor Code; and Title 8 California Code of Regulations Sections 16426 and 16432.

HISTORY

1. New section filed 2-20-92; operative 3-23-92 (Register 92, No. 13). 2. Amendment revising subparts (a)(1), (a)(5), (a)(6), (a)(7), (a)(8), (b), (c), (e)(1), and (e)(2), making other nonsubstantive changes, and deleting former Appendix C filed - -2004; operative - -2004 (Register __, No. __).

~~Appendix C~~

~~Notice of Deadlines~~

~~(To-Go to Contractor for Forfeitures under Section 16437)~~

~~“This document requests the Labor Commissioner of California to approve a forfeiture of money you otherwise would be paid. The [name of the labor compliance program] for the~~

*** Proposed new language is underlined. Proposed deletions to existing language are lined out.**

**** Additions to original proposal are double-underlined; except new Appendix C, which is italicized. Deletions from original proposal are double-lined out.**

~~[name of the awarding body having this work done] is asking the Labor Commissioner of California to agree, in 20 days, that the enclosed package of materials indicates that you have violated the law."~~

~~"Failure to respond to the [name of the labor compliance program's] request that the Labor Commissioner approve a forfeiture by writing to the Labor Commissioner within 20 days of the date of service (date of postmark) of this document on you may lead the Labor Commissioner to affirm the proposed forfeiture, and may also end your right to contest those amounts further. You must serve any written response on the Labor Commissioner, the [name of the labor compliance program] and [name of the awarding body] by return receipt requested/certified mail. If you serve a written explanation, with evidence, as to why the violation did not occur, or why the penalties should not be assessed, within the 20 day period, it will be considered,"~~

~~and~~

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

§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 awarding body having a LCP Labor Compliance Program shall deposit penalties and forfeitures in~~ with the Awarding Body ~~general fund. If an approved LCP is operated through an agent, penalties and forfeitures shall be deposited as provided in the agreement designating the agent for the awarding bodies involved.~~

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(b) Where collection of fines, penalties or forfeitures results from administrative proceedings or court action to which the Labor Commissioner and aAwarding bBody 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 aAwarding bBody, as the Hearing Officer or court may decide.

(c) All ~~amounts~~ penalties recovered by ~~suit~~ in administrative proceedings or court action brought by or against the Labor Commissioner and to which the aAwarding bBody 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 subcontractors~~sub-contractor~~, either by withholding or as a result of administrative proceedings or any court action pursuant to Labor Code Section 1775, 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.

HISTORY

1. New section filed 2-20-92; operative 3-23-92 (Register 92, No. 13). 2. Amendment revising subparts (a), (b), (c), and (d) filed - -2004; operative - -2004 (Register __, No. __).

§16439. ~~Appeals~~ Request for Review of a Labor Compliance Program Enforcement Action.

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(a) A contractor or subcontractor may request a settlement meeting pursuant to Labor Code section 1742.1(b) and may appeal the result seek 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. The Labor Compliance Program shall have the rights and responsibilities of the Enforcing Agency (as defined in 8 C.C.R. section 17202(f)), in responding to such a request for review, including but not limited to the obligations to serve notices, transmit the Request for Review to the hearing office, and provide an opportunity to review evidence in a timely manner, to participate through counsel in all hearing proceedings, and to meet the burden of establishing prima facie support for the Notice of Withholding of Contract Payments by serving a notice of appeal on the Director of Industrial Relations as an alternative to going to court under Labor Code Section 1732. Such notice must be served within 20 days of the date a determination of forfeiture has been approved by the Labor Commissioner. A copy of the notice of appeal shall be served on the awarding body and the LCP at the same time as it is sent to the Director. Appeal of a LCP enforcement action to the Director of Industrial Relations waives the contractor's right to file suit pursuant to Labor Code Section 1732.

(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. The notice shall state the grounds for the appeal, and whether a hearing is desired. The decision to hold a hearing is within the sole discretion of the Director and

~~shall be dependent upon whether the appeal is timely, the matter is within the scope of Labor Code Section 1732, and the material furnished by the record already in the file is insufficient for a fully informed decision. The Director may appoint a hearing officer to review the record below (subsection (e)), hold a hearing and recommend a decision. The Director shall make the final decision on the appeal.~~

~~(c) Upon receipt of a copy of the notice of appeal, the awarding body shall, within 30 days, forward to the Director a full copy of the record of the enforcement proceedings and any further documents, arguments, or authorities it wishes to have considered in the appeals process. Accompanying those materials shall be a declaration of service on the contractor, although materials already served in the process of seeking Labor Commissioner approval may be listed rather than re-served.~~

~~(d) The Director may request a supplemental report on the activities of the Labor Compliance Program. This report will be an update of the annual report required in 8 CCR Section 16431.~~

~~(e) Upon receipt of the notice of appeal, and all documentation referred to in section (c) above, the Director shall have 90 days in which to issue a determination. If additional time is required due to the complexity of the issues, or for other good cause, the Director shall have the right, upon notice to the parties to one 30 day extension of the time in which to issue the determination.~~

~~(f) The Director's ruling on the appeal shall be final.~~

NOTE: Authority cited: Sections 54, 55, 1742(b), and 1773.5, Labor Code. Reference: Sections 1742, 1742.1(b), and 1771.76, Labor Code; and Title 8 California Code of Regulations Sections 17201 - 17270.

HISTORY

1. New section filed 2-20-92; operative 3-23-92 (Register 92, No. 13). 2. Amendment revising former subpart (a) and deleting former subparts (b) through (f) filed - -2004; operative - -2004 (Register __, No. __).

ARTICLES 6 [SEVERABILITY] AND 8 [DEBARMENT] UNCHANGED.

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