June 29, 2010

PROPOSED AMENDMENTS TO

REGULATIONS GOVERNING

LABOR COMPLIANCE PROGRAMS; COMPLIANCE MONITORING AND ENFORCEMENT BY DEPARTMENT OF INDUSTRIAL RELATIONS; and RELATED REVISIONS

CALIFORNIA CODE OF REGULATIONS

TITLE 8, CHAPTER 8, SUBCHAPTERS 4 through 4.8

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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 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) constitute~~s~~ presumptive compliance with the requirement for certified payroll records kept in accordance with 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 (b) 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 governmental decisions, as defined 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).~~ [reserved]

(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 2 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, 1726, 1771.5(b), 1771.55 ~~1771.7, 1771.8, 1771.9,~~ and 1776, Labor Code.

Appendix A

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 Sections 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

* * *

§16423. Approved Labor Compliance Program Required by Statute.

(a) 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 Director pursuant to section 16425 below, unless it either (1) 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, or (2) has agreed to pay a fee to the Department of Industrial Relations for monitoring and enforcement pursuant to Subchapter 4.5 below.

(b) The governing board of any Awarding Body that is required to 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; or

(3) has entered into an agreement with the Labor Commissioner for monitoring and enforcement pursuant to Subchapter 4.5 below.

Copies of the finding required by this subpart (b) together with (A) notice of whether or not the Awarding Body intends to initiate and enforce its Labor Compliance Program either for (i) all public works projects in which the Awarding Body participates or (ii) only those public works projects in which the Awarding Body participates that are subject to the notice, fees, and fee waiver provisions of Article 1 of Subchapter 4.5 (beginning with section 16450) below, and, if applicable, (B) notice of any contract or agreement with a third party to operate a Labor Compliance Program shall be provided promptly to the Director 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) The limited exemption from payment of prevailing wages provided by Labor Code Section 1771.5(a) shall *not* apply 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.

(f) A list of 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 shall be maintained on the Department of Industrial Relations' website.

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

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

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§16427. Extended Authority.

(a) An Awarding Body or third party entity which has operated a Labor Compliance Program with active enforcement responsibilities for at least three consecutive years after initial approval

may apply to the Director for extended authority. The applicant must have a record of submitting and obtaining approvals of forfeitures pursuant to section 16437 of these regulations and bears the burden of producing evidence that it meets the criteria in subpart (b) below.

(b) The Director may grant extended authority to an applicant that has satisfactorily demonstrated its understanding of and ability to monitor and enforce 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 90 days of the receipt of a request for extended authority that the request is granted and the effective date of and extent of any extended authority that is granted, or that the request is denied and the reason for the denial.

(d) A Labor Compliance Program 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 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 Labor Compliance Programs with extended authority, for distribution to interested parties upon request. The Director may agree to alternative reporting formats under 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.

(f) For good cause, which shall include but not be limited to the failure within a three year period to request and obtain any approvals of forfeitures pursuant to section 16437 of these regulations, the Director may withdraw a program's Extended Authority.

NOTE: Authority cited: Section 1773.5, Labor Code. Reference: Section~~s~~ 1771.5, 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, *provided that* the failure is (A) serious or sustained, (B) harmful to the interests of workers employed on a project for which the Labor Compliance Program has monitoring and enforcement responsibilities, and (C) not based on a good faith interpretation of legal requirements or the current enforcement practices of the Labor Commissioner;

(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 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;

(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's approval.

(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. When

submitting a request for revocation pursuant to this subpart, an interested party shall also provide a complete copy of the request and all supporting evidence to the Labor Compliance Program.

(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 subpart (a) above. A copy of the request for revocation shall be provided to the Awarding Body as part of the notice required under subpart (a) above.

(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 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 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 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.

(f) Nothing in this section shall be construed as (1) requiring the Director to extend any approval granted on a temporary or interim basis pursuant to sections 16425 or 16426 above or (2) restricting the Director's authority to impose conditions or restrictions on a Labor Compliance Program's approval in lieu of revocation.

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

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Article 3. Reports and Audits

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§16431. Annual Report.

(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 (d) below~~ by no later than August 31 of each year. The annual report shall cover the twelve month period commencing on July 1 of the preceding calendar year and ending on June 30 of the year in which the report is due. For good cause, the Director may authorize a Labor Compliance Program to use a different reporting period and provide for the annual report to be due no later than 60 days following the close of that reporting period. For a Labor Compliance Program approved prior to July 1, 2009, the Director may require the filing of an interim or supplemental report to cover any gap between the reporting period prescribed under former subpart (d) of this section prior to August 1, 2010 and subpart (a).

(b) The annual report shall be made on the appropriate form [LCP-AR1, LCP-AR2, or LCP-AR3], 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 extended authority under section 16427 above. A third party Labor 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.

(~~b~~c) The Annual Report for a person or entity operating a third party Labor Compliance Program shall also include (1) a certification of compliance with conflict of interest disclosure requirements by employees and consultants who participate in making governmental decisions, as defined under Title 2, California Code of Regulations, section18701, and (2) a current statement disclosing the information required under section 16426(a)(2), (3) and (5) above.

(~~c~~d) 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.

(~~d~~e) ~~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 approval pursuant to section 16425 or 16426 above and shall conclude on the last day of the month immediately 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.~~ A Labor Compliance Program that has ceased operating, either due to the voluntary termination of its program or the revocation of its approval by the Director, shall file a closing annual report within sixty (days) following its last day of operation as an approved program.

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

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

§16433. Limited Exemption.

(a) As provided in Labor Code Sections 1771.5(a) and 1771.55(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, and 1771.55(a), Labor Code.

Article 5. Enforcement

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Subchapter 4.5 Compliance Monitoring and Enforcement by Department of Industrial Relations [New]

Article 1. Notices, Fees, and Fee Waivers.

§16450. Applicability.

§16451. Notice of Projects Subject to Fees.

§16452. Fees for Compliance Monitoring and Enforcement by Department of Industrial Relations.

§16453. Voluntary Payment of Fees for Compliance Monitoring and Enforcement by Department of Industrial Relations in Lieu of Enforcing Labor Compliance Program.

§16454. Payment of Fees for Compliance Monitoring and Enforcement by Department of Industrial Relations by Awarding Body that Elects to Comply with Requirements of Labor Code Section 1771.55(a).

§16455. Fee Waivers; Exemption from Requirements of this Subchapter.

Article 2. Compliance Monitoring Standards

§16460. Establishment of Compliance Monitoring Unit.

§16461. Review of Payroll Records and other Monitoring and Investigative Activities of Compliance Monitoring Unit.

§16462. Complaints.

§16463. Withholding of Contract Payments When Payroll Records are Delinquent or Inadequate.

§16464. Issuance of Civil Wage and Penalty Assessment upon Determination that Contractor or Subcontractor has Violated Prevailing Wage Requirements.

Subchapter 4.5 Compliance Monitoring and Enforcement by Department of Industrial Relations

Article 1. Notices, Fees, and Fee Waivers.

§16450. Applicability.

The regulations in this subchapter shall apply to all of the following:

(a) any public works project awarded on or after August 1, 2010 that is funded in whole or in part from any bond issued by the state to fund public works projects;

(b) any public works project that is subject to a statutory requirement to pay a fee to the Department of Industrial Relations for the monitoring and enforcement of prevailing wage requirements on that project;

(c) any public works project that is subject to a statutory requirement to operate or enforce a labor compliance program or to contract with a third party to operate or enforce a labor compliance program, and for which, in lieu of contracting with another third party, the Awarding Body agrees to pay and the Labor Commissioner agrees to receive a fee for the monitoring and enforcement of prevailing wage requirements on that project; and

(d) all other public works projects undertaken by an Awarding Body that has elected to comply with the requirements of Labor Code Section 1771.55(a).

NOTE: Authority cited: Sections 54, 55, 1771.3, 1771.55 and 1773.5, Labor Code. Reference: Sections 17250.30 and 81704, Education Code; Section 6531, Government Code; Sections 1771.3, 1771.5, 1771.55, 1771.7, 1771.75, 1771.8, 1771.85, and 1771.9, Labor Code; and Sections 20133, 20175.2, 20193, 20209.7, and 20919.3, Public Contract Code.

§16451. Notice of Projects Subject to Fees.

(a) The Awarding Body shall provide the Director with notice of any project that is subject to the requirements of this subchapter as follows:

(1) For any project funded in whole or in part from a bond issued by the state to fund public works projects, the Awarding Body shall provide notice at the time it receives

notice that the funding agency has awarded or released the funds, whichever is later.

(2) For any other project that is not subject to subpart (1) above, the Awarding Body shall provide notice at the time it awards the design-build contract, if using design-build contracting authority, or at the time it awards the initial prime contract, if using any other contracting authority.

(3) The notice required by this section shall be sent to the Office of the Director of Industrial Relations, Attention: Special Assistant, 455 Golden Gate Avenue, 10th Floor, San Francisco, CA 94102, and shall include the following information:

(A) The date of the contract;

(B) The names and contact information for the parties to the contract;

(C) A brief description of the work to be performed;

(D) The precise location or locations where the work will be performed;

(E) The estimated starting date of work on the project;

(F) The source or sources of any state-issued public works bond funding for the project, and the amounts paid or estimated to be paid by each source of that funding;

(G) The estimated total project costs, exclusive of amounts paid for land acquisition; and

(H) The name, title, and contact information for the Awarding Body representative who will be responsible for carrying out the Awarding Body's obligations under this subchapter.

(4) In the case of an ongoing project for which the Awarding Body is seeking to pay a fee to the Department of Industrial Relations for monitoring and enforcement in lieu of contracting with a third party for continued enforcement of a labor compliance program, the Awarding Body shall comply with the requirements of section 16453 below.

(b) The Director may provide for the submission of a single notice to comply with the

requirements of subpart (a) above and the notification requirements of Section 1773.3 of the Labor Code.

(c) The Call for Bids, Design-Build Request, and the contract or purchase order shall contain appropriate language concerning the requirements of Division 2, Part 7, Chapter 1 of the Labor Code and shall also state that the project is subject to the requirements of this subchapter, including the obligation to furnish certified payroll records directly to the Labor Commissioner in accordance with section 16461 below.

(d) On each job site that is subject to compliance monitoring and enforcement by the Department of Industrial Relations under this subchapter, the Awarding Body shall post or require the prime contractor to post a Notice containing the following language:

> "This public works project is subject to monitoring and investigative activities by the Compliance Monitoring Unit (CMU) of the Division of Labor Standards Enforcement, Department of Industrial Relations, State of California. This Notice is intended to provide information to all workers employed in the execution of the contract for public work and to all contractors and other persons having access to the job site to enable the CMU to ensure compliance with and enforcement of prevailing wage laws on public works projects.
>
> "The prevailing wage laws require that all workers be paid at least the minimum hourly wage as determined by the Director of Industrial Relations for the specific classification (or type of work) performed by workers on the project. These rates are listed on a separate job site posting of minimum prevailing rates required to be maintained by the public entity which awarded the public works contract. Complaints concerning nonpayment of the required minimum wage rates to workers on this project may be filed with the CMU at any office of the Division of Labor Standards Enforcement (DLSE).
>
> Local Office Telephone Number: _____
>
> "Complaints should be filed in writing immediately upon discovery of any violations of the prevailing wage laws due to the short period of time following the completion of the project that the CMU may take legal action against those responsible.
>
> "Complaints should contain details about the violations alleged (for example, wrong rate paid, not all hours paid, overtime rate not paid for hours worked in excess of 8 per day or 40 per week, etc) as well as the name of the employer, the public entity which awarded the public works contract, and the location and name of the project.

"For general information concerning the prevailing wage laws and how to file a complaint concerning any violation of these prevailing wage laws, you may contact any DLSE office. Complaint forms are also available at the Department of Industrial Relations website found at www.dir.ca.gov/dlse/PublicWorks.html."

NOTE: Authority cited: Sections 1771.3, 1771.55 and 1773.5, Labor Code. Reference: Sections 17250.30 and 81704, Education Code; Section 6531, Government Code; Sections 1771.3, 1771.5, 1771.55, 1771.7, 1771.75, 1771.8, 1771.85, 1771.9, 1773.2, and 1773.3, Labor Code; and Sections 20133, 20175.2, 20193, 20209.7, and 20919.3, Public Contract Code.

§16452. Fees for Compliance Monitoring and Enforcement by Department of Industrial Relations.

(a) The fee for services under this subchapter shall be as follows:

(1) For any project subject to the requirements of this subchapter solely by reason of the receipt of state-issued bond funds, the fee shall be one-fourth of one percent of the funds released by the funding agency for the project;

(2) For any other project, the fee shall be equal to the greater of the following:

(A) one-fourth of one percent of the proceeds of any state-issued bond funds that have been provided for the project, or

(B) one-fourth of one percent of the total project costs.

(3) For purposes of this subchapter, the term "total project costs" shall include all costs that are incident to the construction of a public works project, including but not limited to financing, engineering, architecture, surveying, testing, legal, and construction management expenses, but shall not include amounts paid for land acquisition.

(4) In the case of an ongoing project for which the Awarding Body is seeking to pay a fee to the Department of Industrial Relations for monitoring and enforcement in lieu of contracting with a third party for continued enforcement of a labor compliance program, the Department may agree to accept a lesser or pro rata fee, depending upon the projected volume of monitoring and enforcement that remains to be done on the project.

(b) The fees required by this section shall be paid at the time the Awarding Body is required to

provide the notice specified in section 16451(a) above and, if applicable, at the time of each successive release of state-issued bond funding from which an additional fee is due.

(c) For projects subject to the payment of a fee based on total project costs under subparts (a)(2) and (a)(3) of this section, the fee shall be calculated based on the total estimated costs as determined at the time the Awarding Body is required to provide notice under section 16451(a)(2) above. This fee shall constitute the entire fee due for the project and shall not be subject to further augmentation or reduction except as follows:

(1) The Department may require verification of items included in the estimate and may require the fee to be recalculated if the Awarding Body's estimate was not based on total project costs as defined in subpart (a)(3) of this section or was otherwise inaccurate.

(2) If the Awarding Body receives state-issued bond funding that makes it subject to a fee in excess of one-quarter of one percent of the total project costs, the Awarding Body shall pay the additional fee due up to the maximum fee specified in subpart (a)(2) of this section.

(3) If the Department receives duplicative payments that cause the amounts paid to exceed the maximum fee due under subpart (a)(2) of this section, the Department shall refund the excess amount.

(d) Fees collected pursuant to this section shall be deposited in the State Public Works Enforcement Fund and shall be used only for the monitoring and enforcement of prevailing wage requirements on projects subject to the fee.

(e) The Director may enter into agreements with any agency that awards state-bond funds for public works projects for the purpose of receiving notice and direct payment of the fee specified in subpart (a)(1) or (a)(2)(A) above at the time the funds are released.

NOTE: Authority cited: Sections 54, 55, 1771.3, 1771.55 and 1773.5, Labor Code. Reference: Sections 17250.30 and 81704, Education Code; Section 6531, Government Code; Sections 1771.3, 1771.5, 1771.55, 1771.7, 1771.75, 1771.8, 1771.85, and 1771.9, Labor Code; and Sections 20133, 20175.2, 20193, 20209.7, and 20919.3, Public Contract Code.

§16453. Voluntary Payment of Fees for Compliance Monitoring and Enforcement by Department of Industrial Relations in Lieu of Enforcing Labor Compliance Program.

(a) An Awarding Body that is required by any existing statute to operate or enforce a labor compliance program or to contract with a third party to operate or enforce a labor compliance program may request the Labor Commissioner to provide the services specified in this subchapter in lieu of operating or enforcing its own labor compliance program or contracting with another third party program for the labor compliance program services specified in subchapter 4.

(b) The fee for services provided pursuant to this section shall be determined in the manner specified in section 16452 above, including any negotiated reduction, as authorized by subpart (a)(4) of section 16452.

(c) Services shall be provided under this section only by agreement, in writing, between the Awarding Body and the Labor Commissioner. The Labor Commissioner may decline to enter into an agreement where the available fee will not provide adequate funding or the Labor Commissioner lacks sufficient staff or resources to provide the services contemplated by this subchapter for the project in question.

(d) Notwithstanding subpart (c) of this section, for any project that requires both the use of a labor compliance program under Public Resources Code Section 75075 and the payment of a fee for compliance monitoring and enforcement by the Department under any other statute, the Labor Commissioner shall enter into an agreement to provide these services upon the request of an Awarding Body that agrees to pay a fee of no less than one-quarter of one percent of the funds provided from the Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006 [Proposition 84] in addition to the fee that is otherwise due under section 16452(a) above.

NOTE: Authority cited: Section 1773.5, Labor Code. Reference: Sections 17250.30 and 81704, Education Code; Section 6531, Government Code; Sections 1771.3, 1771.5, 1771.7, and 1771.8, Labor Code; Sections 20133, 20175.2, 20193, 20209.7, and 20919.3, Public Contract Code; and Section 75075, Public Resources Code.

§16454. Payment of Fees for Compliance Monitoring and Enforcement by

Department of Industrial Relations by an Awarding Body that Elects to Comply with the Requirements of Labor Code Section 1771.55(a).

An Awarding Body that elects to comply with the requirements of Labor Code Section 1771.55(a) for all public works projects that it undertakes shall do all of the following:

(a) Provide the notices required under section 16451 above.

(b) Conduct a prejob conference 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 (following section 16421 in subchapter 4 of these regulations) presumptively meets this requirement.

(c) Pay the fee prescribed by section 16452 above.

NOTE: Authority cited: Sections 1771.3, 1771.55 and 1773.5, Labor Code. Reference: Sections 1771.3 and 1771.55, Labor Code.

§16455. Fee Waivers; Exemption from Requirements of this Subchapter.

(a) An Awarding Body that operates an approved Labor Compliance Program for all public works projects in which the Awarding Body participates shall not be subject to the fees, notices, or compliance monitoring provisions of this subchapter, provided that it remains in compliance with the requirements of subchapter 4 (sections 16421 through 16439) and continues to monitor and enforce compliance on all of its projects, including projects that otherwise would be subject to this subchapter.

(b) An Awarding Body that operates an approved Labor Compliance Program only for those public works projects in which the Awarding Body participates that are subject to this subchapter pursuant to subparts (a) or (b) of section 16450 above, shall be exempt from the fees due under section 16452 above and shall not be subject to the compliance monitoring provisions of Article 2 of this subchapter (commencing with section 16460), provided that (1) it has provided the

notices required by sections 16423(b) and 16451 above; (2) it remains in compliance with the requirements of subchapter 4 (sections 16421 through 16439); and (3) it continues to monitor and enforce compliance on all projects subject to this subchapter.

(c) Notwithstanding subparts (a) and (b), an Awarding Body shall lose its exemption and be subject to the fees and other requirements of this subchapter if it contracts with a third party to initiate and enforce labor compliance programs on its projects. This subpart shall not be construed as precluding the use of consultants under the following circumstances:

(1) for legal representation or other licensed professional services that are directly related to the operation of the labor compliance program and that require special expertise that is not available among the Awarding Body's own employed staff;

(2) to augment employed staff in the performance of tasks required under section 16432 above, provided that the consultants exercise no discretionary authority on behalf of the Awarding Body and are under the direct day-to-day control and supervision of Awarding Body employees who are principally and primarily engaged in performing duties on behalf of the labor compliance program;

(3) for the purpose of reviewing program operations or providing other assistance on a purely advisory basis in which the consultant has no authority to act or withhold action on behalf of the Awarding Body nor the authority to compel, withhold, or delay any action by the Awarding Body; or

(4) for any project or purpose that would not be subject to a fee under this subchapter or require the use of an approved labor compliance program under section 16423 above.

(d) An Awarding Body that is exempt from the requirements of this subchapter, as specified in this section, shall be entitled to obtain or withhold the fees specified in section 16452 above for the purpose of funding its own labor compliance monitoring and enforcement activities to the extent authorized by any funding agency and any other applicable law.

(e) The fee waiver provided by this section shall apply automatically to any Awarding Body Labor Compliance Program that has been approved pursuant to sections 16425, 16426, or 16427

above and that has provided notice under section 16423(b) above with respect to whether it intends to enforce or continue enforcing its Labor Compliance Program for all its public works projects or only those projects that are subject to a fee under this subchapter. The Director shall maintain a list of Awarding Body Labor Compliance Programs that are exempt under either subpart(a) or subpart(b) of this section and may post this list on the Department of Industrial Relations' website.

NOTE: Authority cited: Sections 1771.3, 1771.55 and 1773.5, Labor Code. Reference: Sections 17250.30 and 81704, Education Code; Section 6531, Government Code; Sections 1771.3, 1771.5, 1771.55, 1771.75, 1771.85, and 1771.9, Labor Code; and Sections 20133, 20175.2, 20193, 20209.7, and 20919.3, Public Contract Code.

Article 2. Compliance Monitoring by Labor Commissioner

§16460. Establishment of Compliance Monitoring Unit.

(a) For the purposes of carrying out the specific labor compliance monitoring and enforcement responsibilities prescribed by Labor Code Section 1771.55 and the regulations in this Article, the Labor Commissioner shall establish a Compliance Monitoring Unit within the Division of Labor Standards Enforcement. The functions carried out by the Compliance Monitoring Unit shall be in addition to and shall not limit or supplant the other public works investigation and enforcement responsibilities and authority of the Labor Commissioner and the Division of Labor Standards Enforcement under any other statute or regulation.

(b) Nothing in this subchapter shall be construed as (1) limiting the responsibility and authority of an Awarding Body to take cognizance of prevailing wage violations under Labor Code Section 1726 and take any appropriate action pursuant to and in accordance with that responsibility and authority, or (2) precluding any other remedies otherwise authorized by law to remedy violations of Division 2, Part 7, Chapter 1 of the Labor Code.

(c) The failure of the Compliance Monitoring Unit, the Division of Labor Standards Enforcement, or any other part of the Department of Industrial Relations 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 Division 2, Part 7, Chapter 1 of the Labor Code.

NOTE: Authority cited: Sections 54, 55, 1771.55 and 1773.5, Labor Code. Reference: Sections 1726, 1741, 1771.2, 1771.5, 1771.55, and 1781, Labor Code.

§16461. Review of Payroll Records and other Monitoring and Investigative Activities of Compliance Monitoring Unit.

(a) The function of the Compliance Monitoring Unit is to ensure that public works contractors performing work in the execution of a contract, on projects for which a fee is paid to the Department of Industrial Relations, comply with the prevailing wage requirements found in the Division 2, Part 7, Chapter 1 of the Labor Code. Among other things, this section is intended to (1) provide the Compliance Monitoring Unit, Awarding Bodies, public works contractors, and representatives of the Department of Industrial Relations and the Division of Labor Standards Enforcement with common terminology as they perform their respective roles in prevailing wage compliance, and (2) set forth the manner in which the Compliance Monitoring Unit will ensure compliance with and enforcement of prevailing wage laws on public works projects.

(b) Contractors and subcontractors shall keep accurate payroll records in accordance with Labor Code Section 1776**,** and such records shall be furnished to the Compliance Monitoring Unit at times designated by the Awarding Body in the contract, which shall be at least monthly, or within 10 days of any separate request by the Compliance Monitoring Unit. Payroll records shall be furnished in a format prescribed by section 16401 of Title 8 of the California Code of Regulations, with use of the current version of DIR's "Public Works Payroll Reporting Form" (A-1-131) and "Statement of Employer Payments" (DLSE Form PW26) constituting presumptive compliance with this requirement, provided the forms are filled out accurately and completely. In lieu of paper forms, the Compliance Monitoring Unit may provide for and require the electronic submission of certified payroll reports.

(c) Payroll records timely furnished by contractors and subcontractors in accordance with this section shall be reviewed by the Compliance Monitoring Unit as promptly as practicable after receipt thereof, but in no event more than 30 days after such receipt. "Review" for this purpose

means the inspection of the records furnished to determine whether (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) no less than the correct prevailing wage rates have been reported as paid for each classification of labor listed thereon.

(d) On a random basis and at such other times as it deems appropriate, the Compliance Monitoring Unit may also confirm the accuracy of payroll reports. "Confirmation" for this purpose means the corroboration of information in payroll reports through independent sources, including without limitation worker interviews, examination of any time and pay records found within the definition of "Payroll Records" in section 16000 of Title 8 of the California Code of Regulations, direct verification of "Employer Payments" (as defined at section 16000 of Title 8 of the California Code of Regulations) through third-party recipients of those payments, or any other legal and reasonable method of corroboration. As part of its confirmation process, the Compliance Monitoring Unit may require contractors and subcontractors to furnish for inspection itemized statements prepared in accordance with Labor Code Section 226. The Compliance Monitoring Unit may conduct random confirmation based on a recognized statistical sampling of the records submitted.

(e) Representatives of the Compliance Monitoring Unit may conduct in-person inspection(s) 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 Compliance Monitoring Unit. On-Site Visits may include visual inspection of required job site notices, including but not limited to (1) 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; (2) the Notice of pay days and time and place of payment required by Labor Code Section 207; and (3) the form prescribed by section 16451(d) above. On-Site Visits may also include inspections of records, inspections of the work site and observation of work activities, interviews of workers and others involved with the project, and any other activities deemed necessary by the Compliance Monitoring Unit to ensure compliance with prevailing wage requirements. In accordance with Labor Code Section 90, the Compliance Monitoring

Unit shall have free access to any construction site or other place of labor and may obtain any information or statistics pertaining to the lawful duties of the Labor Commissioner, including but not limited to evidence of compliance with Labor Code Section 226 [itemized wage statements for employees] and any other laws enforced by the Labor Commissioner.

(f) An Audit shall be prepared by the Compliance Monitoring Unit upon determining that there has been a violation of Division 2, Part 7, Chapter 1 of the Labor Code resulting in the underpayment of wages. An "Audit" for this purpose means 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.

NOTE: Authority cited: Sections 54, 55, 1771.55 and 1773.5, Labor Code. Reference: Sections 90, 207, 226, 1771.5, 1771.55, 1773.2, 1775, 1776, and 1813, Labor Code.

§16462. Complaints.

(a) The Compliance Monitoring Unit shall accept complaints from workers or members of the public alleging nonpayment of the required minimum rates of pay to workers or other violations of the prevailing wage laws on projects that are subject to this subchapter. Complaints shall be filed in writing with the Division of Labor Standards Enforcement as soon as the alleged violation is known, and the Division may provide for complaints to be filed electronically. A complaint need not conform to any technical requirements as long as it contains sufficient information to identify the project, affected parties and dates, and describes the subject matter of the complaint in enough detail to enable the Division to commence an investigation into whether a violation occurred.

(b) The Compliance Monitoring Unit shall notify the contractor and subcontractor of any non-compliance as soon as practicable where such notice may enable the contractor or subcontractor to correct the non-compliance. This early notice may describe the nature of the violation only, and it is not necessary that the notice include a full summary of any unpaid wages due.

NOTE: Authority cited: Sections 54, 55, 1771.55 and 1773.5, Labor Code. Reference: Sections 1741, 1771.55, and 1775, Labor Code.

§16463. Withholding of Contract Payments When Payroll Records are Delinquent or Inadequate.

(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.

(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 Commissioner has given the contractor or subcontractor notice of inaccuracies detected by audit or record review. However, prompt correction will stop any duty to withhold if such inaccuracies do not amount to one (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 section 16401 of Title 8 of the California Code of Regulations.

(e) The Labor Commissioner may require the Awarding Body to withhold contract payments when payroll records are delinquent or inadequate. The amount withheld shall be limited to 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 Commissioner 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 Commissioner provides notice that the subcontractor has cured the delinquency or deficiency.

(f) When contract payments are withheld under this section, the Labor Commissioner 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 what amounts the Awarding Body has been directed to withhold; 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 Commissioner has exceeded his or her 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 may be assessed under Labor Code Section 1776(g) for failure to timely comply with a written request for certified payroll records.

(i) This section does not apply to the withholding of contract payments based upon the issuance of a civil wage and penalty assessment which finds a contractor liable for unpaid wages or penalties under Sections 1775, 1776(g), or 1813 of the Labor Code.

NOTE: Authority cited: Sections 1771.55 and 1773.5, Labor Code. Reference: Sections 1729, 1771.5, 1771.55, 1742, 1775, 1776, and 1813, Labor Code.

§16464. Issuance of Civil Wage and Penalty Assessment upon Determination that Contractor or Subcontractor has Violated Prevailing Wage Requirements.

If the Compliance Monitoring Unit determines that there has been any violation of Division 2, Part 7, Chapter 1 of the Labor Code, the Labor Commissioner shall issue and serve a Civil Wage and Penalty Assessment to the contractor or subcontractor or both, in accordance with the requirements of Labor Code Section 1741.

NOTE: Authority cited: Sections 1771.55 and 1773.5, Labor Code. Reference: Section 1741, Labor Code.

Subchapter 4.6~~Article 6~~. Severability

§16500. Severability.

If any provision of the regulations in Subchapter ~~Group~~ 3 or Subchapter ~~Group~~ 4 or the application thereof to any person, party or circumstances is held invalid, such invalidity shall not affect other provisions or applications of these regulations which can be given effect without the invalid provisions or applications, and to this end the provisions of these regulations are severable.

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

Subchapter 4.8~~Article 8~~. Debarment

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