

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

***CHANGES ONLY***

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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.

\* \* \*

(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;

\* \* \*

(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 ap-

proved 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 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 ~~per-~~  
~~sonnel~~ 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.

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:

\* \* \*

(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(fg);

\* \* \*

~~(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

**§164252. Applicable Dates for Enforcement of Awarding Body Labor Compliance Programs.**

\* \* \*

(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.

\* \* \*

**§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.

\* \* \*

(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.

## **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, 10<sup>th</sup> 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. \_\_).

**\* 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.**

**§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;

\* \* \*

(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).

\* \* \*

(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.

**§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:

\* \* \*

(8) Awareness of the rights and responsibilities imposed on the Labor Compliance Program as an agent of a governmental agency under Section 16421(~~bc~~) 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.

\* \* \*

(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.

\* \* \*

(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;

\* \* \*

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**§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).

\* \* \*

**§16428. Revocation of Final Approval.**

\* \* \*

(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 ~~a~~Awarding ~~b~~Body or Joint Powers Authority that has contracted 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.

\* \* \*

(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.

\* \* \*

**§16429. Notice of Labor Compliance Program Approval.**

\* \* \*

**Article 3. Reports and Audits**

**§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 Pro-

gram shall use the same reporting period in succeeding years; provided that for good cause the Director may authorize a change in the reporting period.

**§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.

Appendix B

An audit record is sufficiently detailed to “verify” compliance with the requirements of Chapter<sup>21</sup>, ~~Public Works~~, of Part 7 of Division 2 of the Labor Code,” when the audit record displays that the following procedures were accomplished:

\* \* \*

(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 Labor 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 bBody ~~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.

\* \* \*

## Article 5. Enforcement

### **§16434. Duty of Awarding Body Labor Compliance Program.**

\* \* \*

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

\* \* \*

(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.

\* \* \*

(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 Program 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.

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(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.

*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>
_____	_____
_____	_____
_____	_____

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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 Pay- checks or Stubs (Yes/No)</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____

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

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

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

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

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

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

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_____	_____	_____	*
_____	_____	_____	*
_____	_____	_____	*

\* 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>
_____	_____
_____	_____
_____	_____

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

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

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

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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>
_____	_____	_____
_____	_____	_____
_____	_____	_____

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

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<u>Contractor/Subcontractor</u>	<u>Recovered Unpaid Amounts Paid to Workers</u>	<u>Additional Training Fund</u>	<u>Expla- nation</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 Ap-  
prenticeship 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>
_____	_____
_____	_____
_____	_____

7. *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.

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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.

\* \* \*

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

(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;

\* \* \*

**§16436. Forfeitures Requiring Approval by the Labor Commissioner.**

\* \* \*

(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.

\* \* \*

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

**§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;

**§16438. Deposits of Penalties and Forfeitures Withheld.**

\* \* \*

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

(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 Pro-

gram 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.~~

\* \* \*

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