

Frequently Ask Questions- Labor Compliance Programs (including and especially Labor Compliance Programs required by Proposition 84)

What is a Labor Compliance Program?

Answer: Labor Compliance Programs (LCPs) are entities which are approved by the Director of Industrial Relations to monitor and enforce compliance with state prevailing wage laws on public works projects. LCPs enforce prevailing wage laws on behalf of agencies that award public works contracts (known as “awarding bodies”).

LCPs are required, among other things, to inform contractors about their prevailing wage obligations, monitor compliance by obtaining and reviewing certified payroll reports, corroborate reported information from time to time, investigate complaints and other suspected violations, and take appropriate enforcement action when violations are found. LCPs must be approved by the Director of the Department of Industrial Relations, may have their approval revoked, and must follow specific reporting and performance standards set forth in regulations adopted by the Director of Industrial Relations at Title 8, California Code of Regulations, sections 16421–16439.

An approved LCP refers to the *entity* that has applied for and received approval and not to a manual or methodology for conducting labor compliance enforcement.

Who can be approved as a Labor Compliance Program?

Answer: DIR only approves awarding bodies as LCPs and only if the awarding body is required by state statute to have an approved LCP. Currently (as of January 1, 2016), there is only one such statute, Public Resources Code section 75075, which requires awarding bodies to have an approved LCP for any project funded in whole or in part by Proposition 84 (Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006).

A few other statutes continue to require approved LCPs for specified public works projects awarded prior to January 1, 2012, until those projects are completed. ([List of statutes requiring DIR-approved LCP.](#)) DIR also continues to recognize and oversee four legacy LCPs that were previously approved to monitor and enforce compliance on all of their public works projects in exchange for higher exemptions from prevailing wage requirements. Those LCPs are the California Department of Transportation (Caltrans), the City of Los Angeles, the Los Angeles Unified School District, and the County of Sacramento.

How does an awarding body that expects to receive Proposition 84 funds go about establishing or obtaining an approved Labor Compliance Program?

Answer: Public Resources Code section 75075 requires an awarding body that will use Proposition 84 funding for a public works project to “adopt and enforce, or contract with a third party to enforce, a labor compliance program pursuant to subdivision (b) of Labor Code Section 1771.5 for application to that public works project.” For purposes of this requirement, an awarding body can include a private entity, such as a private water district, that is receiving public money that will be used for a construction contract.

An awarding body needs skilled staff, a detailed enforcement manual, and competent legal support for its labor compliance program. The awarding body may use its own employees, an outside consultant, or some combination of the two to staff the program, so long as the people who will perform the work have training and expertise in prevailing wage enforcement and all the duties of an LCP. The enforcement manual must cover the responsibilities of the LCP and all of the necessary monitoring and enforcement procedures. Legal support must be available through an attorney who knows public works law and enforcement procedures.

The awarding body must complete and submit an application for approval, using the form found at: <http://www.dir.ca.gov/lcp/LCPApplicationUpdates.htm>. This form covers the factors used by DIR to evaluate a program under section 16425 of Title 8 of the California Code of Regulations. Ordinarily DIR makes a decision to approve or deny the application within 60 days. Before denying an application, DIR usually will give the awarding body an opportunity to correct any problems that may stand in the way of approval.

What are the factors for approval of a Labor Compliance Program?

Answer: Title 8, California Code of Regulations, section 16425, requires an awarding body to “submit evidence of its capacity and ability to operate an effective Labor Compliance Program” and lists seven factors used to make this evaluation. The most important factors are the experience and training of the staff that will operate the LCP, possession of a quality, up-to-date enforcement manual, and the availability of competent legal support. Other factors considered include the volume of public works undertaken by the awarding body, whether the LCP will be undertaken as a joint or cooperative venture with other awarding bodies, the awarding body’s past record with respect to Labor Code violations, and the method chosen for notifying the Labor Commissioner of serious contractor violations that may lead to debarment.

If necessary, the Director’s Office may ask to interview LCP program personnel to determine if they have the necessary training and expertise in prevailing wage enforcement and the ability to perform all the duties of an LCP.

Can an awarding body hire a consultant?

Answer: Yes, an awarding body may use a consultant or third party administrator to operate an LCP that is required for a project receiving Proposition 84 funding. The awarding body must still adopt the program and submit the application in its own name, but a consultant may be used to help prepare the application, including the manual, and to implement and operate the program. If the consultant will be operating the program, it is important that the application include information about the training and expertise of the consultant’s staff that will be doing the work. In evaluating such an application, DIR may also take into consideration the extent to which the consultant’s staff is already committed to providing LCP services for other awarding bodies.

Where can an Awarding Body find LCP consultants?

Answer: Although DIR at one time approved private third party LCPs, it no longer does so and it does not provide or maintain lists of qualified consultants. However, by talking to other agencies, associations, joint labor-management committees, and other industry groups that are involved with public works construction, an awarding body should be able to identify consultants who have done this work for approved LCPs. A “Request for Qualifications” process can also be used to identify consultants with the necessary background and expertise.

Can an awarding body operate an in-house LCP?

Answer: Yes, as long as the in house staff has the training and expertise needed to operate an effective program (including an awareness of and the capacity to carry out all of the regulatory responsibilities specified in Title 8, California Code of Regulations, sections 16421 through 16439) in addition to meeting the other criteria for approval. It is important to note that this is skilled legal enforcement work in a very specialized area and not something that can be performed effectively by clerical staff or others with no experience in labor compliance enforcement. Most awarding bodies that have not been doing labor compliance enforcement will not have staff with the necessary training and expertise unless they hire one or more persons who have been performing this work for another agency.

What is required of the staff implementing the LCP as far as training and enforcement?

Answer: Staff operating the Labor Compliance Program should be familiar with the State’s prevailing wage laws and requirements as well as with the various procedures used to monitor

compliance with those requirements and to enforce prevailing wage law. Among other things, LCP staff must know how to ensure that certified payroll records are timely submitted, how to review those records to identify potential violations, and how to confirm and corroborate reported data through source documents and other information. LCP staff also must know how to conduct investigations, on-site inspections, and worker interviews, and must be able to conduct a pre-job conference with contractors. LCP staff must know how to prepare an audit after a violation has been found, what penalties to assess, how to obtain an “approval of forfeiture” from the Labor Commissioner, and the procedures that need to be followed to enforce and defend a determination of violation through a formal hearing.

Relevant experience is usually obtained by working as a public works investigator for the Labor Commissioner, for another LCP, or for a public agency that monitors and enforces labor compliance, even though that agency may not be an approved LCP. Relevant experience may also be acquired by working with a joint labor management committee that monitors public works compliance or handling labor compliance responsibilities for a construction manager or prime contractor that does public works projects involving a variety of trades.

As part of the application process, an enforcement and policy manual is required? What is this manual?

Answer: The manual contains the awarding body’s procedures for operating its Labor Compliance Program and enforcing prevailing wage requirements. It must cover the applicable sections of the California Labor Code as well as Title 8 regulations that govern public works requirements and LCPs. It also includes forms, procedures, and other guidelines that will be used by the Labor Compliance Program.

An awarding body may adopt a manual prepared by a consultant, but it should ask for the consultant’s permission to adopt the manual and be sure that the manual is accurate and up to date. (Anyone who prepares or adopts and uses an enforcement manual should be aware that public works laws change frequently so a manual that was previously approved may not necessarily be up to date today.)

If the awarding body receives only minimal or partial funding from Proposition 84, is the awarding body still required to have an approved Labor Compliance Program?

Answer: Public Resources Code section 75075 requires an LCP for “a public works project financed *in any part*” by Proposition 84. This requirement is enforced by the agency that awards the funding, and an awarding body could be required to repay the bond funds and possibly be subject to other penalties if the funding agency later discovers that the awarding body failed to meet the LCP requirement.

Is it possible for two or more awarding bodies to join in adopting a single LCP?

Answer: Awarding bodies (which may include small privately owned water systems) are permitted and encouraged to enter into joint powers agreements or develop consortiums that can adopt one Labor Compliance Program to monitor and enforce compliance on behalf of multiple awarding bodies for multiple small projects. DIR’s LCP Oversight staff can be consulted for further guidance on how to adopt this type of program.

Are DIR-approved LCPs required for either federally funded or locally funded projects?

Answer: Certain state statutes may require an awarding body to establish a DIR-approved LCP. As of January 1, 2015, the only such statute currently in effect is Public Resources Code section 75075 (Proposition 84). Other local, state, or federal statutes may call for an awarding body to establish another type of LCP or may attach some other condition, but a DIR-approved LCP would not be required. Awarding bodies may adopt their own LCPs to fulfill their own responsibility to monitor and enforce labor compliance on their own public works projects, including their responsibility under Labor Code section 1726(a) to “take cognizance” of prevailing wage violations. LCPs that are not specifically authorized or required by state statute are not subject to DIR approval or oversight; however, they still must follow the enforcement procedures specified in the Labor Code when enforcing state law, and the existence of an LCP does not in any way limit the Labor Commissioner’s authority to monitor and enforce labor compliance on a public works project.

Can an awarding body with a previously approved LCP use that LCP for a new project that will receive Proposition 84 funding?

Answer: Yes. If an awarding body has previously been approved by DIR as an LCP, and that approval has not been revoked or restricted, then the awarding body may use that LCP for a new Proposition 84-funded project without having to apply again for approval. (Listings of all approved LCPs can be found on DIR’s website at <https://www.dir.ca.gov/lcp/lcplist> .) If the awarding body has changed the staffing for the LCP since the LCP was approved, it should provide written notice to DIR of that change.

Does an awarding body have any other responsibilities in connection with being a DIR-approved LCP?

Answer: Yes, a DIR-approved LCP must submit an annual report to DIR by August 31st of each year. The report must be submitted on one of the prescribed [annual report forms](#), must include the program's ID number, and must cover the LCP's relevant monitoring and enforcement activities during the preceding fiscal year (July 1 through June 30). Failure to file an annual report may result in the revocation of the LCP's approval. The awarding body must also make sure that contract language and notice requirements are met and it must cooperate with LCP enforcement staff and with the Labor Commissioner's Office, by allowing full access to work sites and by withholding contract funds pursuant to a lawful withholding order. Finally, the awarding body must notify DIR in writing and submit a final annual report when terminating its LCP (which it will want to do when it is no longer required by any state statute to have a DIR-approved LCP).

How are Awarding Bodies and Labor Compliance Programs affected by the recent changes under SB 854?

SB 854 did not change any substantive prevailing wage requirements, but it made significant changes in the duties of contractors and awarding bodies relating to public works projects. In particular, SB 854 now requires (1) all public works contractors to be registered with DIR in order to bid, be listed on a bid, or work on a public works project; (2) awarding bodies to register *all* public works projects with DIR using the PWC-100 form; and (3) contractors and subcontractors on all projects to furnish certified payroll records directly to the Labor Commissioner (unless and excused from doing so). *These requirements apply whether or not the Awarding Body has a DIR-approved LCP.* Please check DIR's [public works website](#) for more information about these and other requirements.