

FILE CITY OF OAKLAND
OFFICE OF THE CITY CLERK OAKLAND AGENDA REPORT

2011 FEB 24 PM 5:44

TO: Office of the City Administrator
ATTN: Dan Lindheim
FROM: Department of Contracting and Purchasing
DATE: March 8, 2011
RE: Resolutions Approving A Labor Compliance Program for the Redevelopment Agency and the City of Oakland in Response to the Requirements of The Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006 (Proposition 84) and Labor Compliance Program Requirements of California Labor Code Section 1771.5(b)

SUMMARY

The Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006 (Proposition 84) authorized over \$5 billion dollars in general obligation bonds to provide safe drinking water, water quality and supply, flood control, waterway and natural resource protection, water pollution and contamination control, state and local park improvements, public access to natural resources, and water conservation efforts.

The Public Works Agency (PWA), Project Delivery, Facilities Planning Section, applied for and was recently awarded two State grants under Proposition 84 in the amount of 7.25 million dollars. These funds will be used for the West Oakland Teen Center and Cesar Chavez renovation projects.

The City of Oakland must have a Department of Industrial Relations (DIR)/State approved Labor Compliance Program (LCP) in order to be reimbursed for those grant awards.

Section 1. Division 43 Public Resources Code, Chapter 1, 75075, states in part:

“The body awarding any contract for a public works project financed in any part from funds made available pursuant to the division shall 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.”

The City of Oakland currently monitors and enforces compliance with prevailing wages. This compliance monitoring and enforcement operates out of the Department of Contracting and Purchasing, Social Equity Division. The City follows Labor Code and DIR requirements for a wage compliance program but has not been required to obtain formal approval of its program by DIR until now.

The City currently monitors for prevailing wages and can implement the compliance program without additional staff. As such, the Department of Contracting and Purchasing (DCP) has prepared an application, program and operations manual to secure DIR approval.

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Before submitting the packet, DIR stipulates that the governing body must review and approve the application, compliance program and manual by resolution.

Once approved by City Council, the resolution and complete packet will move forward to DIR for review and approval. Upon DIR approval, the Public Works Agency will be positioned to obtain full reimbursements.

The complete packet is attached as follows:

Attachment I – Application to Director for Approval of Awarding Body’s Labor Compliance Program

Attachment II - Labor Compliance Program

Attachment III – Implementation Plan & Operations Manual

FISCAL IMPACT

There will be a significant negative fiscal impact on the City of Oakland if an approved Labor Compliance Program is not in place. The City of Oakland will lose 7.5 million in reimbursable State of California Proposition 84 Grant funds. Moreover, the City will lose the ability to renovate the West Oakland Teen Center and Cesar Chavez Park facility.

There will be no need for additional staff and no additional costs. The Department of Contracting and Purchasing, Social Equity Division, currently monitors projects for prevailing wage compliance using existing standard operating procedures. These existing procedures comport with those outlined in the DIR LCP.

Funds may be realized because of the approved program. A State-approved LCP authorizes the City to assess and keep penalties charged to non-compliant contractors/subcontractors who violate prevailing wage requirements. California Labor Code Section 1775 (a) (1) states, “The contractor and any subcontractor under the contractor shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit not more than fifty dollars (\$50) for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rates...”

BACKGROUND

Labor Code section 1771.5 sets forth requirements for state-approved Labor Compliance Programs (“LCPs”) to enforce prevailing wage requirements on public works construction projects. State-approved LCPs are required, among other things, to inform contractors about prevailing wage obligations, to monitor compliance by obtaining and reviewing certified payroll reports, to investigate complaints and other alleged or suspected violations and to take appropriate enforcement action when violations are found.

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The City of Oakland currently monitors projects using standard operating procedures that mirror those procedures outlined in the proposed LCP attached.

Oakland has a longstanding prevailing wage policy for City and Redevelopment Agency public works projects. In 1978 and 1987 the Oakland City Council and the Oakland Redevelopment Agency approved Resolution Nos. 57103 C.M.S. and 87-4 respectively, establishing the requirement for the payment of prevailing wages on all public works and Redevelopment Agency projects (*Attachments IV and V*).

Upon the finding of a prevailing wage violation, staff promptly notifies the contractor(s) of the underpayment and withholds payment until the contractor provides proof that the violation has been corrected and the employees have been paid back wages. Contractors are required to submit a corrected or supplemental certified payroll that shows the total hours worked and difference in the hourly rate that should have been paid and what was actually paid as well as copies of canceled checks to the affected employee(s).

KEY ISSUES AND IMPACTS

A state-approved LCP is required in order to secure reimbursement of Proposition 84 funds. Not having an approved LCP would affect construction of the West Oakland Teen Center and Cesar Chavez Park projects. PWA has advised that construction is anticipated to start in the fall of 2011. The DiR approval process will take approximately sixty (60) days.

While the City currently monitors projects using standard operating procedures that mirror those required under state law and by the DIR, the City has not yet obtained State approval for its LCP program as required by Proposition 84.

A State-approved LCP will require two modifications to the City's current standard operating procedures for enforcing prevailing wages. The proposed state-approved program will require the City to submit an annual report of underpayments.

Secondly, the City would not have authority to impose penalties on contractors in connection with State apprenticeship violations. Instead the City would be required to file a Public Works Complaint with the Division of Apprenticeship Standards (DAS) detailing the State violation and including relevant documentation of the violations. The above does not preempt the City from imposing penalty assessments for Oakland resident apprenticeship shortfalls.

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SUSTAINABLE OPPORTUNITIES

Economic: Enforcing California's prevailing wage laws ensures the payment of livable wages with benefits. California law requires that not less than the general prevailing rate of per diem wages be paid to all workers employed on a public works project.

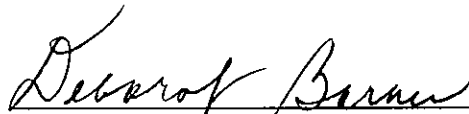
Environmental: Supports the Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006 (Proposition 84) in an effort to provide safe drinking water, water quality and supply, flood control, waterway and natural resource protection, water pollution and contamination control, state and local park improvements, public access to natural resources, and water conservation efforts.

Social Equity: Prevailing wages must be paid to all workers employed on a public works project when the public works project is over \$1,000. This translates to a livable wage to Oakland workers and their families.

ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that the City Council approve the resolutions adopting the attached LCP.

Respectfully submitted,



Deborah Barnes, Director
Department of Contracting and Purchasing

Prepared by:
Shelley Darensburg, Sr. CCO
Social Equity Division

FORWARD TO THE
PUBLIC WORKS COMMITTEE:


Office of the City Administrator

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Attachment 1

Application to Director for Approval of Awarding Body's Labor Compliance Program

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Suggested format of Application to Director for Approval of Awarding Body's Labor Compliance Program (8 CCR §16425)

NOTE: If necessary, you may attach additional sheets.

The Director may ask for additional documentation as to any information provided or any other information that may have a bearing on your ability to do labor compliance enforcement.

Awarding Body Seeking Approval:

City of Oakland
Department of Contracting & Purchasing
250 Frank Ogawa Plaza # 3341
Oakland, CA 94612

Awarding Body's Contact Person:

Deborah Barnes, Director
Department of Contracting & Purchasing, Social Equity Division
250 Frank Ogawa Plaza # 3341
Oakland, CA 94612

- A. Identify the individuals who will be enforcing the Labor Compliance Program (LCP).
(Note: If using outside consultants or an approved third party contract provider, identify the awarding body personnel who will monitor or supervise the outside work as well as the individuals and affiliations of the individuals who will perform the enforcement work.)

**Shelley Darensburg, Senior Contract Compliance Officer, City of Oakland,
Department of Contracting & Purchasing, Social Equity Division**

Experience/training on public works/labor compliance issues (Please provide specific dates, details and examples of public works prevailing wage rate enforcement activities, including whether such experience involve federal, state, or local law. In addition, please include private sector experience on behalf of unions or contractors or on a joint labor management committee pursuant to the federal Labor Management Cooperation Act of 1978 (29 U.S.C. section 175a). Furthermore, please include participation in any public works enforcement training provided by the Division of Labor Standards Enforcement (DLSE)):

25 years of experience monitoring and enforcing federal, state, and local prevailing wage laws and ordinances. Bachelor of Science degree in Organizational Behavior from the University of San Francisco in 2006.

Employed with the City of Oakland for twenty-five years. Responsibility for enforcing labor standards including but not limited to prevailing wages for all of the 25 years.

From 1986 through 1993, Served as an Administrative Assistant with the City of Oakland, Office of Community Development. Responsible for assisting with investigating prevailing wage violations, reviewing certified payroll reports to ensure that the correct wages are being paid;

assigning wage determinations; performing on-site compliance interviews with workers to confirm the payment of prevailing wages.

From 1993 through 1996, Assistant Contract Compliance Officer. Responsible for assisting with investigating prevailing wage violations, reviewing and monitoring certified payroll reports to ensure that certified payroll reports were submitted and that the correct prevailing wages are paid; assigning wage determinations; performing on-site compliance interviews with workers to confirm the payment of prevailing wages. Responsible for conducting pre-bid meetings to inform potential bidders of prevailing wage and other labor standards requirements.

From 1996 through 2005, Contract Compliance Officer. Responsible for investigating prevailing wage violations, reviewing and monitoring certified payroll reports to ensure that certified payroll reports were submitted and that the correct prevailing wages are paid; assigning wage determinations; performing on-site compliance interviews with workers to confirm the payment of prevailing wages. Responsible for reviewing bid specifications to ensure the inclusion of prevailing wages and other labor standards requirements. Conducting pre-bid meetings to inform potential bidders of prevailing wage and other labor standards requirements. She was responsible for issuing notices of prevailing wage violations and notice of compliance when underpayment has been corrected and employees made whole; and responsible for scheduling and conducting prevailing wage appeal hearings.

From 2005 through Present, Senior Contract Compliance Officer for the City of Oakland. She supervises, directs and reviews the day to day work of Contract Compliance Officers; Assistant Contract Compliance Officers, Field Representative, in the City of Oakland's Department of Contracting and Purchasing (DCP)—Social Equity Division. DCP is responsible for the monitoring and enforcements of the City's social equity policies, prevailing wages and other labor standards requirements. Responsible for supervising investigating prevailing wage violations, reviewing and monitoring certified payroll reports to ensure that certified payroll reports were submitted and that the correct prevailing wages are paid; assigning wage determinations; performing on-site compliance interviews with workers to confirm the payment of prevailing wages. Supervises the review of bid specifications to ensure the inclusion of prevailing wages and other labor standards requirements. Responsible for supervising the conducting of pre-bid meetings to inform potential bidders of prevailing wage and other labor standards requirements. Responsible for supervising the staff that prepares notices of prevailing wage violations and notice of compliance when underpayment has been corrected and employees made whole and responsible for scheduling and conducting prevailing wage appeal hearings.

Trainings:

October 2001—State of California, Department of Industrial Relations Public Works/Prevailing Wage Seminar for Awarding Agency Personnel

September 2005--American Contract Compliance Association (ACCA) Training Institute Davis Bacon/Labor Compliance/Prevailing Wages Davis-Bacon and Related Acts Conference. Received continuing education credit

LCP duties and responsibilities to be performed including percentage of time to be devoted to LCP work:

30%--Supervise, direct, review, the enforcement and monitoring of local, state, and federal prevailing wages and other labor standards activities including review of certified payroll reports; project site interviews, assignment of prevailing wage determinations, notices of non-compliance with prevailing wages; conducting pre-bid and post award meetings to educate and inform potential bidders of prevailing wages, labor and public contract code requirements, and various other labor standards provisions.

2. **Vivian Inman, Contract Compliance Officer, City of Oakland, Department of Contracting & Purchasing, Social Equity Division**

Experience/training on public works/labor compliance issues (Please provide specific dates, details and examples of public works prevailing wage rate enforcement activities, including whether such experience involve federal, state, or local law. In addition, please include private sector experience on behalf of unions or contractors or on a joint labor management committee pursuant to the federal Labor Management Cooperation Act of 1978 (29 U.S.C. section 175a). Furthermore, please include participation in any public works enforcement training provided by the Division of Labor Standards Enforcement (DLSE)):

Masters Degree in Business Administration obtained from the University of Phoenix with a in 2005.

20 years of experience monitoring and enforcing labor standards including prevailing wages. she has been employed with the City of Oakland since 1991.

From 1991 through 1993, Served as an Office Assistant II/Administrative Assistant with the City of Oakland. Responsible for assisting with investigating prevailing wage violations, reviewing and monitoring certified payroll reports to ensure that certified payroll reports were submitted and that the correct prevailing wages are paid; assigning wage determinations; performing on-site compliance interviews with workers to confirm the payment of prevailing wages. Responsible for conducting pre-bid meetings to inform potential bidders of prevailing wage and other labor standards requirements.

From 1993 to 1998, Assistant Contract Compliance Officer with the City of Oakland. During her tenure as an Assistant Contract Compliance Officer, she was responsible for assisting with investigating prevailing wage violations, reviewing and monitoring certified payroll reports to ensure that certified payroll reports were submitted and that the correct prevailing wages are paid; assigning wage determinations; performing on-site compliance interviews with workers to confirm the payment of prevailing wages. She was responsible for conducting pre-bid meetings to inform potential bidders of prevailing wage and other labor standards requirements.

From 1998 to Present, Contract Compliance Officer for the City of Oakland. Responsible for investigating prevailing wage violations, reviewing and monitoring certified payroll reports to ensure that certified payroll reports were submitted and that the correct prevailing wages are paid; assigning wage determinations; performing on-site compliance interviews with workers to confirm the payment of prevailing wages. Responsible for reviewing bid specifications to ensure the inclusion of prevailing wages and other labor standards requirements. She was responsible for conducting pre-bid meetings to inform potential bidders of prevailing wage and other labor standards requirements. Responsible for issuing notices of prevailing wage violations and notices of compliance when underpayment has been corrected and employees made whole, and scheduling and conducting prevailing wage appeal hearings.

Trainings:

October 2001—State of California, Department of Industrial Relations Public Works/Prevailing Wage Seminar for Awarding Agency Personnel

September 2005--American Contract Compliance Association (ACCA) Training Institute Davis Bacon/Labor Compliance/Prevailing Wages Davis-Bacon and Related Acts Conference. Received continuing education credit

Enforcement Activities Includes but not limited to the following examples:

City Project. No.	Contractor	Date of Violation	Violation type	Penalty Amount	Status
C274410/ 81 st Avenue Branch Library	NBC General Contractors	2/3/2010	Prevailing Wage Violation	\$5,803.88	Resolved
C274410 /81 st Avenue Branch Library	NBC General Contractors	2/3/2010	Audit of certified payroll reports	None	Resolved
C274410 /81 st Avenue Branch Library	NBC General Contractors	7/3/2010	Prevailing Wage Violation	\$353,038.75	Referred to the State – Notice to Withhold funds cancelled
C190710/Greenman Field Renovation	Star Construction	1/8/2008	Using Wrong Classification	\$3,214.59	Resolved
C259410/Sheffield Village Renovation	Rockridge Builders	2/11/2009	Prevailing Wage Violation – No Training Fund Contributions	\$8,986.02	Resolved
G251210/Diamond Deck Repair	Bay Construction	4/24/2006	Prevailing Wage Violation	\$1,462.92	Resolved
G251210/Diamond Deck Repair	Bay Construction	1/30/2006	No Certified Payroll Reports Submitted	No penalty	Resolved
Mandela Foods Cooperative Grocery Store Tenant Improvement	The Dieden Company	11/24/2008	No Certified Payroll Reports Submitted	No Penalty	Resolved
Private Building Sewer – 1433 Adeline Street,	Ortiz Construction	9/1/2006	Prevailing Wage Violation	\$128.88	Resolved

Oakland, CA					
2777 Footliill Blvd -- Fence Removal & Installation	Arthur Young Debris Removal	8/4/2008	Prevailing Wage Violation	\$2,071.68	Resolved

LCP duties and responsibilities to be performed including percentage of time to be devoted to LCP work:

10%--Review of certified payroll records (electronic submittals) to ensure contractors/subcontractors have full accountability by ensuring that each individual, laborer or craft-person working on a public works contract appears on the certified payroll reports., sole owners and partners who work on the contract must also submit a certified payroll report; verify electrician certification, monitor payment of the specified prevailing wage rates is to include all elements defined as the General Prevaihng Rate of Per Diem Wages in Tide 8 CCR Subsection 16000.

5%--Ensure DAS 140 is sent to the City within 10 days of each contractor/subcontractor starting work on the project, ensure apprenticeship ratios are compliant.]

10%--Communicate to the contractor regarding all violations, adequacies or deficiencies for the prime and any applicable subcontractor; prepare monthly audit reports for the prime or subcontractor who has failed to pay the applicable prevailing wage rates or failure to comply with the apprenticeship requirements.

10%--Prepare notices to withhold progress or final payments for failure to comply with the LCP program requirements., complete project closeouts in accordance with the program requirements.

10%--Conduct on-site interviews with workers to verify proper payment of prevailing wage and compliance with apprenticeship requirements.

3. **Sophany Hang, Assistant Contract Compliance Officer, City of Oakland, Department of Contracting & Purchasing, Social Equity Division**

Experience/training on public works/labor compliance issues (Please provide specific dates, details and examples of public works prevailing wage rate enforcement activities, including whether such experience involve federal, state, or local law. In addition, please include private sector experience on behalf of unions or contractors or on a joint labor management committee pursuant to the federal Labor Management Cooperation Act of 1978 (29 U.S.C. section 175a). Furdtermore, please include participation in any public works enforcement training provided by the Division of Labor Standards Enforcement (DLSE)):

Graduated from Merritt College, Oakland, CA in 1994 with Associate of Arts in Business Accounting and Business Administration.

Employed by the City of Oakland since 1996. Responsible for or has assisted in the responsibility of enforcing labor standards including but not hmited to prevailing wages for all of the 15 years she has been employed with the City of Oakland.

From December 1996 to December 1997, Served as a Public Service Employee 14 for the City of Oakland. Responsible for assisting with MBE/WBE/LBE/SLBE certification. Responsible for reviewing certified payroll reports to ensure compliance with prevailing wage requirement.

From May 1, 1998-March 1, 2006, Served as a Contract Compliance Field Technician for the City of Oakland. She was responsible for performing project site visits, interviewing workers at project site, preparing sites visits reports and investigating discrepancies, assisting with the review of applications and certification of Local/Small Local Business Enterprise (LBE/SLBE) and Disadvantage Business Enterprise (DBE) firms. She was responsible for assisting with investigations of formal and informal complaints of non-compliance with prevailing wages and other labor standards requirements. She was also responsible for reviewing projects final payments to ensure that the contractors and all subcontractors complied with prevailing wages and other City requirements before forwarding final payment to supervisor for sign-off

From July1, 2007 to present, Serves as an Assistant Contract Compliance Officer for the City of Oakland. She is responsible for attending initial conferences with project managers and contract administration Analysts to establish a timeline for completing contract process; review bid specifications to ensure the inclusion of prevailing wage requirements and other labor standards requirements. She is also responsible for conducting pre-bid/pre-proposal meetings to inform potential bidders of prevailing wage and other labor standards requirements. She is responsible for conducting post award meetings with the awarded contractor and their sub-contractors to inform them of prevailing wages and other labor standards requirements and obtaining a sign-off from the contractor and ALL subcontractors that they are aware of the requirements to pay prevailing wages, hire apprentices, and to inform them of the requirements of the subcontracting and subletting fair practices act. She is responsible for the review of progress and final payments to verify that the contractor and all subcontractors have complied with prevailing wage and other labor standards requirements. She is also responsible for resolving noncompliance issues, conducting close out audits, resolve any prevailing wage violations, and any other labor standards required by the City of Oakland.

Training-

American Contract Compliance Association (ACCA) one week for September 2006 and one week for September 2007.

Davis-Bacon and Related Acts training-July 2000.

State of California Department of Industrial Relations –October 1-2 2001

Enforcement Activities:

City Project name and No.	Contractor/Sub	Date of Violation	Violation type	Penalty Amount	Status
C157910-The Rehab of Sanitary Sewer in the area bounded by MacArthur Blvd, Patterson Ave,	Andes Construction	12/19/2006	Prevailing Wage Violation	\$5,000	Resolved

Remhardt Dr., Carson St. And Madrone St.					
C82660- Hegenberger Rd. East and Airport Access Rod Streetscape	Ray's Electric	10/16, 2007	Prevailing Wage Violation	1,306.56	Resolved
C323670-Tree Pruning at Various Locations in District 6	The Care of Trees	6/10/2008	Prevailing Wage Violation	\$2,428.65	Resolved
B246741	Malachi Construction	11/9/2009	Prevailing Wage Violation	\$1,654.12	Resolved
C213720-City Stables, Paddocks Project	Rockridge Builders	1/6/2010	Prevailing Wage Violation - No Training Fund Contributions	\$5,297.67	Resolved
C227710-The Rehab of Sanitary Sewers in the Area Bounded by Franklin St. 3 rd St. Broadway, and 11 th St.	Da'rcy and Harty/AJW Construction	10/28/2010	Prevailing Wage /Local Employment Violation	\$44,440.12	Resolved
G320010- Renovation of Mathilda Cleveland Transitional housing	Bay Construction		Prevailing Wage Violation	\$6,558.67	\$2,520.00
C58695- Oakland Police Locker Room Improvement	DC Construction	5/4/2009	Prevailing Wage Violation	\$43,743.24	Resolved
G79710- Construction of a Relief Sewer Along 29 th Ave., International	McGuire & Hester/Bayline, Pacific Liners	12/9/2009	Prevailing Wage /Local Employment Violation	\$36,567.09	Resolved

Blvd. 28 th Ave., East 16 th St., and 27 th Ave.					
G283010- Peralta Flacienda Phase 3B	Arthulia/B.T Mancini	12/23/2010	Prevailing Wage/Local employment Violation	\$7,679.13	\$7,679.13
C267110- Rchab of Sanitary Sewers in Area Bounded by Embarcadero, Fallon St. 12 th St. and Ahce St.	Andes Construction	7/21/2010	Prevailing Wage/Local Employment Violation	\$5,242.27	Resolved
C261010-Lake Merritt Bandstand ADA Ramp.	Sposeto Engineering	7/23/2010	Prevailing Wage/Local Employment Violation	\$,794.78	\$1,580.04
P338510-Hall of Pioneers Chinese Garden Improvement	McGuire & Hester	5/4/2010	Prevaihnng Wage/Local Employment Violation	\$4,332.74	Resolved

LCP duties and responsibilities to be performed including percentage of time to be devoted to LCP work:

10%--Review of certified payroll records (electronic submittals) to ensure contractors/subcontractors have full accountability by ensuring that each individual, laborer or craft-person working on a public works contract appears on the certified payroll reports., sole owners and partners who work on the contract must also submit a certified payroll report; verify electrician certification, monitor payment of the specified prevailing wage rates is to include all elements defined as the General Prevailing Rate of Per Diem Wages in Title 8 CCR Subsection 16000.

5%--Ensure DAS 140 is sent to the City within 10 days of each contractor/subcontractor starting work on the project, ensure apprenticeship ratios are compliant.]

10%--Communicate to the contractor regarding all violations, adequacies or deficiencies for the prime and any applicable subcontractor; prepare monthly audit reports for the prime or subcontractor who has failed to pay the applicable prevailing wage rates or failure to comply with the apprenticeship requirements.

10%--Prepare notices to withhold progress or final payments for failure to comply with the LCP program requirements., complete project closeouts in accordance with the program requirements.

10%--Conduct on-site interviews with workers to verify proper payment of prevailing wage and compliance with apprenticeship requirements.

3. **Matt Berens, Field Technician, City of Oakland, Department of Contracting & Purchasing, Social Equity Division**

Mr. Berens graduated from San Francisco State University with a B.A. in Political Science in Spring 2006. Mr. Berens has been employed with the City of Oakland for 4 years.

From September 2007 to Present, Srves as a Contract Compliance Field Technician with the City of Oakland. Responsible for conducting site visit/certified payroll monitoring. Responsible for assisting contractors with inputting certified payroll into City's LCP Tracker system; verifies and approves apprentices on City projects for entry into LCP Tracker system. He also verifies prevailing wages per Oakland's Resolution No 57103 CMS and CA Labor Code 1771. Additionally work performed includes monitoring City's local employment program. In addition, compile and prepare prevailing wage violation worksheets. Responsible for assisting with investigations of formal and informal complaints of non-compliance with prevailing wages and other labor standards requirements. Responsible for assisting with review of project final payments to ensure that the contractors and all subcontractors have complied with prevailing wages and other labor standards requirements as well as other City requirements before forwarding final payment to supervisor for sign-off.

Training-

- 2008-- Federal Labor Standards/Davis-Bacon training
- 2008--DIR/Alameda County Prevailing Wage/Labor Comphance Seminars conducted by Foundation for Fair Contracting
- 2009--DIR/Alameda County Prevailing Wage/Labor Comphance Seminars conducted by Foundation for Fair Contracting
- 2010-- DIR/Alameda County Prevailing Wage/Labor Comphance Seminars conducted by Foundation for Fair Contracting

Enforcement Activities Includes but not limited the following examples:

City Project. No.& Name	Contractor	Violation type	Penalty Amount	Status
C87610C	Quantum General Contractors	Prevailing Wage Violation	\$193,775.37	Referred to State
G230130	FDC Construction	Prevailing Wage Violation	\$2,684.34	Resolved. Contract Employees made whole. Copies of Canceled checks provided by contractor.
G283010	AD Construction	Prevailing Wage Violation	\$14,055.76	Resolved. Contract Employees made whole. Copies of Canceled checks provided by contractor.
P353410	Safcshields,	Prevailing	\$360.40	Resolved. Contract

	Inc.	Wage Violation		Employees made whole. Copies of Canceled checks provided by contractor.
G293510	FPV Electrical	Prevailing Wage Violation	\$261.60	Resolved. Contract Employees made whole. Copies of Canceled checks provided by contractor.
C245510/C245520	G&G Builders	Prevaihg Wage Violation	\$10,210.50	Resolved. Contract Employees made whole. Copies of Canceled checks provided by contractor.
P235710	Bay Construction	Prevaihg Wage Violation	\$2,308.88	Resolved. Contract Employees made whole. Copies of Canceled checks provided by contractor.
B246741	Malachi Construction	Prevailing Wage Violation	\$2,707.76	Resolved. Contract Employees made whole. Copies of Canceled checks provided by contractor.
B246741	Astro Construction	Prevaihg Wage Violation	\$1,173.12	Resolved. Contract Employees made whole. Copies of Canceled checks provided by contractor.
G283010	Arthuha Construction	Prevaihg Wage Violation	\$5,238.74	Withholding notice sent to contractor. Will hold until contractor's submits proof of payment to workers.

LCP duties and responsibilities to be performed including percentage of time to be devoted to LCP work:

20%--Review of certified payroll records (electronic submittals), ensure contractors/subcontractors have full accountability by ensuring that each individual, laborer or craft-person working on a public works contract appears on the certified payroll reports., sole owners and partners who work on the contract must also submit a certified payroll report; verify electrician certification, monitor payment of the specified prevailing wage rates is to include all elements defined as the General Prevailing Rate of Per Diem Wages in Tide 8 CCR Subsection 16000.

10%--Ensure DAS 140 is sent to the City within 10 days of each contractor/subcontractor starting work on the project, ensure apprenticeship ratios are compliant.

20%--Communicate to the contractor regarding all violations, inadequacies or deficiencies for the prime and any applicable subcontractor; prepare monthly audit reports for the prime or subcontractor who has failed to pay the applicable prevailing wage rates or failure to comply with the apprenticeship requirements. Report any discrepancies, or non-compliances to Contract Compliance Officer.

20%--Conduct on-site interviews with workers to verify proper payment of prevailing wage and compliance with apprenticeship requirements.

B. State the average number of public work projects the awarding body annually administers:

43 public works projects are currently being administered by the City of Oakland.

C. State whether the proposed LCP is a joint or cooperative venture among awarding bodies; and, if so, how the resources and expanded responsibilities of the LCP compare to the awarding bodies involved:

The proposed LCP is not a joint or cooperative venture among awarding bodies. The proposed LCP will be fully enforced by the City of Oakland.

D. Describe the awarding body's record of taking cognizance of Labor Code violations in the preceding five years, including any withholding of funds from public works contractors pursuant to LC 1726.

In the last five years, the City has conducted over 25 labor code violations investigations. Of the investigations conducted, twenty-three were resolved. Resolutions included making employees whole and/or submission of certified payroll reports as required by law. Two investigations were turned over to the State of California.

E. Identify the attorney or law firm available to provide legal support for the LCP, including handling of the LCP's responsibilities during the administrative review process set forth in Labor Code Section 1771.6.

City Attorney's Office
City of Oakland
One Frank Ogawa Plaza 6th Floor
Oakland, CA 94612
Attn: Doryanna Moreno

F. Identify the method by which the LCP will notify the Labor Commissioner of willful violations as defined in Labor Code Section 1777.1(d):

Whenever it is determined that a willful violadon has occurred in failing to comply with prevailing wage rate requirements (as set forth in the Labor Code and public works contracts) by paying less than the stipulated basic hourly rate to trades workers, or if overtime, holiday rates, fringe benefits, and/or employer payments are paid at a rate less than stipulated, it shall be reported to the Labor Commissioner upon compledon of an investigation and audit

G. Indicate whether the Awarding Body has established its own Labor Comphance Program in accordance with the requirements of Labor Code Section 1771.5(b) and subchapter 4 of chapter 8 of Tide 8 of California Code of Regulations or 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 subchapter 4 of chapter 8 of Title 8 of Cahfornia Code of Regulations. If the Awarding Body has contracted with one or more persons or entities to operate all or any part of the Awarding Body's Labor Comphance Program, please identify (name, address, telephone, and principal contact) all of those persons or entities.

The City of Oakland has established its own Labor Compliance procedures in accordance with the requirements of Labor Code. To that end, the City conducts on-site interviews, review of certified payroll reports submitted by contractors/subcontractors via the web-based Labor Compliance Program Tracker as well as other labor standards enforcement activities.

- H. Indicate whether the Awarding Body intends to enforce labor compliance on all of its public works projects (*i.e.*, not limited to projects that are funded by bonds or other statutes that require the Awarding Body to have an LCP as a condition of funding). If not, please indicate the kinds of projects on which you intend to enforce labor compliance and whether you are required to have a labor compliance program as a condition for obtaining funding for the project or projects.

The City of Oakland will *enforce* labor compliance Program on all public works projects.

- I. Attach a copy of the Awarding Body's resolution adopting the LCP and, if applicable, any other resolution approving any contracts with persons or entities identified in G above.

(NEED RESOLUTION APPROVING PROGRAM)

- J. Attach the proposed manual outlining the responsibilities and procedures of the LCP.

Awarding Body's Representative
Name and Signamre

Date Signed

Mail two copies of this form and attachments to:

**OFFICE OF THE DIRECTOR
DEPARTMENT OF INDUSTRIAL RELATIONS
455 GOLDEN GATE AVENUE, 10th FLOOR
SAN FRANCISCO, CA 94102
ATTENTION: EXECUTIVE ASSISTANT TO THE DIRECTOR**

**CITY OF OAKLAND
DEPARTMENT OF CONTRACTING
AND PURCHASING
LABOR COMPLIANCE PROGRAM**



**Prepared by the City of Oakland
JANUARY 2011**

City of Oakland Labor Compliance Program Manual

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CITY OF OAKLAND DEPARTMENT OF CONTRACTING & PURCHASING LABOR COMPLIANCE PROGRAM

INTRODUCTION

The City of Oakland's Department of Contracting & Purchasing, Social Equity Division is responsible for educating, assisting, monitoring and enforcing prevailing wage requirements and applicable labor laws to ensure that all contractors working on City projects are in compliance with State (California Labor Code Chapter 1 of Part 7 of Division 2) and Federal (Code of Federal Regulations 29) prevailing wage statutes and regulations.

This program is applicable to all public works projects awarded by the City of Oakland on or after **August 1, 2010**. California Labor Code Section 1770, et seq., require contractors on public works projects pay their workers based on the prevailing wage rates which are established and issued by the Department of Industrial Relations, Division of Labor Statistics and Research.

SECTION I—Labor Compliance Program Requirements

a.) The City of Oakland's Labor Compliance Program (LCP) is certified under California Code of Regulations Chapter 8, Section 16425. The City of Oakland, Department of Contracting & Purchasing received initial certification on _____ in establishing the LCP, the City adheres to the statutory requirements as stated in California's labor Code Section 1771.5.

b) Pursuant to California Labor Code Section 1771.5, Oakland City Council and Redevelopment Agency Resolution Nos. 57103 C.M.S. and 87-4 respectively, the City of Oakland requires the payment of the general prevailing wage rate of per diem wages and

the general prevailing rate of per diem wages for holiday and overtime work on City projects.

c) California Labor Code Section 1776 requires contractors to keep accurate payroll records of trades workers on all public works projects and to submit copies of certified payroll records upon request.

d) California Labor Code Section 1777.5 requires contractors to employ registered apprentices on public works projects.

This **Labor Compliance Program** contains the labor compliance standards required by state and federal laws, regulations, and directives, as well as City policies and contract provisions, which include, but are not limited, to the following:

1. Payment of applicable general prevailing wage rates.
2. Employment of properly registered apprentices.
3. Providing certified payroll records upon request.
4. Monitoring City construction sites for the verification of proper payments of prevailing wage rates and work classification.
5. Conducting pre-bid meetings with contractors/subcontractors.
6. Withholding contract payments and imposing penalties for noncompliance.
7. Provide applicable reports to the California Labor Commissioner
8. Preparation and submittal of an Annual Report to the Department of Industrial Relations.

The City is committed to providing a current, complete and accurate LCP program for all applicable projects. As such, the City will update its administrative manual and LCP documents each time the Labor Code is amended and /or the DIR issues new regulations relating to LCPs. The City will also conduct periodic training of its LCP staff when the Labor Code and DIR regulations relating to LCP change and/or as needed.

SECTION L PUBLIC WORKS SUBJECT TO PREVAILING WAGE LAWS

State prevailing wage rates as set forth in Labor Code Sections 1720, 1720.2, 1720.3, and 1771, have been made applicable to City construction contracts and include, but are not limited to, such types of work as construction, alteration, demolition, repair, installation or maintenance work. The Division of Labor Statistics and Research (DLSR) predetermines the appropriate prevailing wage rates for particular construction trades and crafts by county.

Types of Contracts to Which Labor Compliance Program Requirements Apply

As provided in Labor Code Section 1771.3(a) (2) and (b), 1771.5(c) and California Code of Regulations Section 16450 et seq., an awarding body Labor Compliance Program (LCP), shall apply to 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.

SECTION II. – EMPLOYMENT OF MINORS PROHIBITED

The employment of minors, under 16 years of age, is strictly prohibited in all building and construction work of any kind per California Code of Regulations Title 8, Chapter 6, Subsection 1, Article 1 § 11701(b)

SECTION III. – YOUTH EMPLOYMENT PROGRAMS

Regardless of age or status in a youth employment program, any workers employed on Public Works projects are subject to the payment of prevailing wages.

SECTION IV. – CASH PAYMENTS PROHIBITED

The City requires the contractor and all subcontractors to make weekly wage payments to all workers employed on the project. Payments shall be made by means of a check, money order or cashier's check. Cash payments are prohibited.

SECTION V- COMPETITIVE BIDDING ON CITY PUBLIC WORKS CONTRACTS – CONTRACT LANGUAGE

The City publicly advertises upcoming public works projects to be awarded according to a competitive bidding process. Further information regarding the requirements of the City's bidding process may be obtained by accessing the **Department of Contracting & Purchasing website** at <http://cces.oaklandnet.com/ContComp/> Any additional questions may be addressed to the Department of Contracting & Purchasing, Social Equity Division, 250 Frank Ogawa Plaza, Suite 3341., Oakland CA 94612.

All City bid advertisements (or bid invitations) and public works contracts requiring LCP compliance shall contain appropriate language concerning the requirements of the Public Works chapter of the Labor Code similar to the sample language listed below:

This project is subject to the requirements of Section 1770 et seq. of the California Labor Code requiring the payment of prevailing wages, the training of apprentices and compliance with other applicable requirements. The City shall provide upon request copies of the prevailing rate of per diem wages to be paid to all applicable workers. The City shall make available prevailing wage rate determinations to all interested parties upon reasonable request during normal business hours. Additionally, the contractor shall have a copy of the prevailing wage determinations posted in a conspicuous place at each job site.

Prevailing wage information may also be obtained via the internet at: www.dir.ca.gov. The City has instituted a Labor Compliance Program (LCP) and all contractors who perform work on projects covered by the LCP with this awarding body will be subject to the terms of that LCP.

As a condition to receiving progress payments, final payment and payment of retention on any and all projects on which the payment of prevailing wages is required, the contractor shall have provided to the City, along with its request for payment, all applicable and necessary certified payrolls and other required documents for the time period covering such payment request. The City shall withhold any portion of a payment, including the entire payment amount, until certified payroll forms and other required LCP documents are properly submitted. In the event that certified payroll forms do not comply with the requirements of Labor Code Section 1720 et seq., or wage violations are identified by the City, the City may continue to hold sufficient funds to cover estimated wages and penalties under the contract.

SECTION VI - POST AWARD MEETING

After the City awards the public works contract, and prior to the commencement of the work, a Post Award meeting shall be conducted with the contractor and subcontractors for the particular project. The general contractor is responsible to see that the information provided at the meeting, relating to Labor Compliance Program (LCP) requirements, is distributed to its subcontractors.

SECTION VII - REVIEW OF CERTIFIED PAYROLL RECORDS

Certified Payroll Records Required

The contractor and each subcontractor shall maintain payrolls and basic records (timecards, canceled checks, cash receipts, trust fund forms, accounting ledgers, tax forms, superintendent and foreman daily logs, etc.) during the course of the work and shall preserve them for a period of three (3) years thereafter for all trades workers working at the City's project sites. Such records shall include the name, address, and social security number of each worker, his or her classification, a general description of the work each employee performed each day, the rate of pay (including rates of contributions for, or costs assumed to provide fringe benefits), daily and weekly number of hours worked, deductions made, and actual wages paid.

Electronic Payroll Submittals.

The Contractor shall register for and use the City's selected electronic certified payroll tracking system- LCPTracker, a Labor Compliance software program. This software is a web-based system accessible provided by an independent company on the World Wide Web. The website address (http://www.fminternational.com/labor_compliance.htm) may be accessed for general information and an introductory product tour.

Full Accountability

Each individual, laborer or craftsperson working on a public works contract must appear on the payroll. The basic concept is that the employer who pays the trades worker must report that individual on its payroll. This includes individuals working as apprentices in

an apprenticeable trade. Owner-operators are to be reported by the contractor employing them; rental equipment operators are to be reported by the rental company paying the workers' wages.

Sole owners and partners who work on a contract must also submit a certified payroll record listing the days and hours worked, and the trade classification descriptive of the work actually done. The contractor shall make the records required under this section available for inspection by an authorized representative of the City and the Department of Industrial Relations, and shall permit such representatives to interview trades workers during working hours on the project site.

Responsibility for Subcontractors

The contractor shall be responsible for ensuring adherence to labor standards provisions by its subcontractors in the manner specified by Labor Code Section 1775. Moreover, the contractor is responsible for Labor Code violations by its subcontractors of which it has knowledge.

Payment to Employees

Employees must be paid unconditionally, the full amounts which are due and payable for the period covered by the particular payday. An employer must, therefore, establish a fixed workweek (i.e., Sunday through Saturday). On each and every payday, each worker must be paid all sums due and must be provided with an itemized wage statement.

If an individual is called a subcontractor, when, in fact, he/she is merely a journey level mechanic supplying only his/her labor, such an individual would not be deemed a bona fide subcontractor and must be reported on the payroll of the contractor who contracted for his or her services as a trades worker. Moreover, any person who does not hold a valid contractor's license cannot be a subcontractor, and anyone hired by that person is the worker or employee of the contractor who contracted for his or her services for purposes of workers' compensation laws.

A worker's rate for straight time hours must equal or exceed the rate specified in the contract by reference to the Prevailing Wage Rate Determinations for the class of work actually performed. Any work performed on Saturday, Sunday, and/or a holiday, or a portion thereof, must be paid the prevailing rate established for those days regardless of the fixed workweek. The hourly rate for hours worked in excess of 8 hours in a day or 40 hours in a workweek shall be premium (overtime) pay. All work performed in excess of eight hours per day, 40 hours per week, on Saturday, on Sunday, and on holidays shall be paid in accordance with the applicable Prevailing Wage Determination. Additionally, appropriate shift pay and applicable travel and subsistence pay is also required.

Maintaining Records:

The City shall maintain all records relating to any project subject to Labor Compliance for a period of three (3) years from the date of the filing of the Notice of Completion of the Project. In the event no Notice of Completion is filed, the City shall

maintain all LCP records relating to a specific project for three (3) years from the date of actual completion or beneficial occupancy, whichever is later.

Apprentices

Contractors shall comply with the requirements of the apprenticeship provisions of California Labor Code Section 1777.5.

Apprentices shall be permitted to work as such only when they are registered, Individually, under a bona fide apprenticeship program registered and approved by the State Division of Apprenticeship Standards. The allowable ratio of apprentices to journeypersons in any craft/classification shall not be greater than the ratio permitted to the contractor as to its entire workforce under the registered program. Any worker listed on a payroll at an apprentice wage rate who is not registered shall be paid the journey level wage rate determined by the Department of Industrial Relations for the classification of the work he/she actually performed.

The contractor shall furnish written evidence of the registration (i.e., Apprenticeship Agreement or Statement of Registration) of its training program and apprentices, as well as the ratios allowed and the wage rates required to be paid thereunder for the area of construction, prior to using any apprentices in the contract work.

Pre-apprentice trainees, trainees in non-apprenticeable crafts, and others who are not duly registered will not be permitted on public works projects unless they are paid full prevailing wage rates as journey-persons. Compliance with California Labor Code Section 1777.5 requires all public works contractors and subcontractors to:

1. Register the prevailing wage project (DAS-140 available at <http://www.dir.ca.gov/DAS/DASForm140.pdf>);
2. Request to Train apprentices on public works projects in a ratio to journeypersons as stipulated in the Apprenticeship Standards under which each Joint Apprenticeship Committee operates, but in no case shall the ratio be less than one (1) apprentice hour to each five (5) journeypersons hours worked on the project. (DAS-142 or equivalent documentation or the actual employment of apprentices).
3. Contribute to the training fund in the amount identified in the prevailing wage rate publication for journeypersons and apprentices. Where the trust fund administrators cannot accept the contributions, then payment shall be made to the California Apprenticeship Council, Post Office Box 420603, San Francisco, CA 94142; and
4. It should be noted that a prior approval for a separate project does not confirm approval to train on any other project. The contractor/subcontractor must check with the applicable Apprenticeship Committee to verify status.

b.) The **Contract Work Hours and Safety Standards Act (CWHSSA)** requires time and one-half pay for overtime as defined by the Federal government. In the event that this project is federally funded, an additional penalty of \$10/day per violation will be strictly enforced for under-payment of the overtime rate. Intentional violations of CWHSSA standards are considered a Federal criminal misdemeanor.

c.) California Labor Code Section 1778 makes it a felony for anyone to require any laborer or mechanic employed on a public works project to *kickback* any portion of their wages. The **Copeland (Anti-Kickback) Act** is the federal statute that makes it a felony to require any laborer or mechanic employed on a Federal or Federally Assisted public works project to return any portion of his/her wages in connection with services rendered upon any public work.

Payroll Review and Audits

Payroll review and audits shall be conducted by the Department of Contracting & Purchasing (or their trained designee), and may also be conducted at the request of the Labor Commissioner to determine whether all trades workers on project sites have been paid according to the prevailing wage rates.

The City's preference and recommended practice is to review all certified payroll for all employees for all weeks of work on a project at least once a month. However, the CCO shall review the certified payrolls not less than once a month. The CCO shall review payrolls for at least one full week of payroll for each contractor or subcontractor performing work on the applicable project for each month in which work was performed on the project.

DAS 140 - Register to Train – The City will look to receive a DAS-140 from each contractor for each apprenticeable craft employed on the project. The original DAS-140 should be sent within ten days of each contractor/subcontractor starting work on the project. A copy of DAS 140 forms should be turned in with each contractor's and subcontractor's first certified payroll. If the form is not completed correctly or is not submitted, the contractor/subcontractor will be notified of this deficiency and asked to take corrective action by completing and filing a correct DAS-140 form.

DAS 142 - Request apprentices - The City will look for either apprentices being employed on the project (through examination of certified payrolls) or look to receive a DAS-142 (or its equivalent) from the contractor/subcontractor for each apprenticeable trade employed on the project and confirmation that the DAS-142 form was sent to an appropriate apprenticeship committee. A contractor is **NOT REQUIRED** to use the DAS-142 form, but can document its request for apprentices by other means. However, if a contractor does use the 142 form (filling it out properly and filing it promptly), with a delivery receipt, the contractor is "legally presumed" to be in compliance.

Employ Apprentices in 1:5 ratio – To the extent that apprentices are available for employment, the Labor Code mandates that apprentices are employed in a 1:5

ratio. This means an average (calculated at the end of the project) of one apprentice hour for every 5 journeymen hours. Some approved Apprenticeship Standards recognize a different ratio and those other ratios may be used so long as the apprenticeship committee has DAS approval.

Pay correct **apprenticeship** rates - Apprenticeship wage rates will also be checked by the City against the applicable prevailing wage determination.

Pay correct training **contribution (CAC 2)** - The City will review and confirm that the training contributions set forth in the prevailing wage determination are paid to either an approved apprenticeship committee or to the California Apprenticeship Council. (CAC-2 contributions to be confirmed through DIR website.)

SECTION VIII ONSITE JOB VISITS AND WORKER INTERVIEWS

DCP monitors labor standards compliance by conducting interviews with construction workers at the job site and reviewing payroll reports and initiates and oversees any enforcement actions that may be required.

SECTION IX - ENFORCEMENT

Duty of the Awarding Body

The City of Oakland, as the awarding body having an LCP, has a duty to enforce the Labor Code public works requirements (Chapter 1 of part 7 of Division 2 and Division 3 of the Labor Code).

SECTION X - PROJECT CLOSE-OUT- FORFEITURES AND PENALTIES

In accordance with Labor Code Section 1727, the City may withhold, from any monies payable on account of work performed by the Contractor or subcontractor, such sums as may administratively be determined to be necessary to satisfy any liabilities of the Contractor or its subcontractor for unpaid wages and liquidated damages as specified in this Section. In the event of failure to pay any laborer or mechanic, including any apprentices, employed or working on the site of the work, all or part of wages required by the contract, the city may, after written notice to the contractor (Notice of Withholding Contract Payments), take such action as may be necessary to cause the suspension of further payment, advance or guarantee of funds until such violations have ceased. Once the project has been completed, the City shall:

If ANY WAGE VIOLATION HAS OCCURRED during the course of the project, then the City will assess penalties as follows:

- Wage Violation** – Labor Code 1775 - \$50 per day per worker per violation. The City now has discretion to reduce or waive penalties. Reductions or waivers will only be made if the contractor meets the requirements of Labor Code Section 1775,

subparagraph (b) i.e. good faith or inadvertent error, prompt correction and no additional violations. No reduction should be made if there are outstanding wages still due. Reasons for reduction of penalties will be documented and included in Notice of Request for Forfeitures to the Labor Commissioner.

- **Overtime Violation** – Labor Code Section 1813 - \$25 per day per worker. Mandated by statute with no discretion for reduction. Even if certain union agreements allow for employees to work four days of 10 hours each day without overtime, it is the prevailing wage determination which will control in this instance with overtime pay being mandated after 8 hours worked in a day. Labor Code Section 1811.

- **Failure to Provide Certified Payrolls** (including fringe benefit statements, timecards, canceled checks, etc.) within 10 days of Request - Labor Code 1776 (g). The penalty of \$25 per day per worker continues until strict compliance is met (all documents delivered or certified payroll input into the City's LCP tracker).

- **Willful and/or Repeat Offenders** will be subject to maximum penalties as stated above and a recommendation of debarment will be made to the DIR.

- **Liquidated Damages** – If prevailing wages remain unpaid 60 days after a Notice to Withhold is issued to the contractor, the contractor shall be assessed liquidated damages equal to the amount of any unpaid wages. The City shall hold appropriate funds at the conclusion of the project to cover all wages due, penalties and liquidated damages.

- **Apprenticeship Violation** - Labor Code Section 1777.7 \$100 - \$300 per calendar day of noncompliance and debarment up to 3 years. This may include failure to pay training contributions, employ apprentices at the ratio required, etc. The City does not have the authority to impose penalties for Apprenticeship Violations, but instead will file a Public Works Complaint detailing the violation and submitting relevant documentation of the violations to the DAS.

- **Unlicensed Contractor** – Labor Code Section 1021. Any contractor working without a valid contractor license shall be subject to a penalty of \$200 per day per worker. This is

not a penalty that LCPs enforce. Rather, the City will file a complaint with the DIR, as well as with the Contractors State License Board (CSLB).

SECTION XI -NOTIFICATION OF CONTRACTOR AND APPEAL RIGHTS OF PROGRAM ENFORCEMENT ACTION

Notice of Withholding of Contract Payments

After determination of the amount of forfeiture by the Labor Commissioner, the City shall provide notice of withholding of contract payments to the contractor and subcontractor, if applicable. The notice shall be in writing and shall describe the nature of the violation and the amount of wages, penalties, and forfeitures withheld. Service of the notice shall be completed pursuant to Section 1013 of the Code of Civil Procedure by first-class and certified mail to the contractor and subcontractor, if applicable. Notice to Contractor shall be deemed notice to its performance bond surety. The notice shall advise the contractor and subcontractor, if applicable, of the procedure for obtaining review of the withholding of contract payments. The awarding body shall also serve a copy of the notice by certified mail to any bonding company issuing a bond that secures the payment of wages covered by the notice and to any surety on such bond, if their identities are known to the awarding body.

SECTION XII--FEDERALLY FUNDED/ASSISTED CONSTRUCTION PROJECTS

Projects receiving full or partial federal funds are subject to the regulations listed below, in addition to any and all applicable California Labor requirements.

I. DAVIS-BACON REGULATIONS

The U.S. Department of Labor (DOL) has published rules and instructions concerning Davis-Bacon and other labor laws in the Code of Federal Regulations (CFR) and can be found in Title 29 CFR Parts 1, 3, 5, 6 and 7. Part 1 explains how the DOL establishes and publishes Davis-Bacon Act wage determinations and provides instructions on how to use the determinations. Part 3 describes the Copeland Act requirements for payroll deductions and the submission of weekly certified payroll reports. Part 5 covers the labor standards provisions that are in each contract relating to Davis-Bacon Act wage rates and the responsibilities of contractors and contracting agencies to administer and enforce the provisions. Part 6 provides for administrative proceedings enforcing Federal labor standards on construction and service contracts. Part 7 sets parameters for due process procedures before the Wage Appeals Board (renamed Administrative Review Board). These regulations are used as the basis for administering and enforcing the laws.

The Davis-Bacon Act

The Davis-Bacon Act requires the payment of prevailing wage rates (which are determined by the DOL) to all laborers and mechanics on Federal construction projects in excess of \$2,000. Construction includes alteration and/or repair, including painting and decorating, of public buildings or public works.

The Contract Work Hours and Safety Standards Act (CWHSSA)

CWHSSA requires time and one-half pay for overtime (O/T) hours (over 40 hours in any work week) worked on the covered project. The CWHSSA applies to both direct Federal contracts and to indirect Federally-assisted contracts *except* where the assistance is solely in the nature of a loan guarantee or insurance. CWHSSA violations carry a liquidated damages penalty (\$10/day per violation). Intentional violations of CWHSSA standards are considered a Federal criminal misdemeanor.

The Copeland Act (Anti-Kickback Act)

The Copeland Act makes it a crime for anyone to require any laborer or mechanic (employed on a Federal or Federally-assisted project) to *kickback* any part of their wages. The Copeland Act also requires every employer (contractors and subcontractors) to submit weekly certified payroll reports (CPRs).

The Fair Labor Standards Act (FLSA)

The FLSA contains Federal minimum wage rates and overtime (O/T) requirements. These requirements generally apply to any labor performed and may be *pre-empted* by other Federal standards such as the Davis-Bacon Act prevailing wage requirements and CWHSSA O/T provisions. Only the Department of labor has the authority to administer and enforce the FLSA. The Department of Contracting & Purchasing (DCP) will refer any possible FLSA violations that are found on projects to the DOL.

IL CONSTRUCTION CONTRACT PROVISIONS

Each contract subject to Federal (Davis-Bacon) labor standards requirements must contain contract provisions containing labor standards clauses and a Davis-Bacon Wage Decision. These documents are bound into the contract specifications.

The Labor Standards Clauses

The labor standards clauses describe the responsibilities of the contractor concerning Davis-Bacon wages and obligate the contractor to comply with the labor requirements. The labor standards clauses also provide for remedies in the event of violations, including withholding from payments due to the contractor to ensure the payment of wages or liquidated damages which may be found due. These contract clauses enable the contract administrator to enforce the Federal labor standards applicable to the project.

Davis-Bacon Wage Decisions

The Davis-Bacon Wage Decision is a listing of various construction work classifications such as Carpenter, Plumber, and Electrician, and the minimum wage rates (and fringe benefits, where prevailing) that employees performing work in those classifications must be paid. . .

SECTION XIII - ANNUAL REPORTS

Annual Report on the Labor Compliance Program to the Director of the Department of Industrial Relations.

DCP will prepare and submit to the Director of the Department of Industrial Relations an annual report (form LCP-AR1 available at http://www.dir.ca.gov/lcp/LCP-AR1-AB_limited.doc.) on the operation of its Labor Compliance Program, within 60 days after the end of its fiscal year.

For further information regarding the LCP program questions may be directed to the Department of Contracting & Purchasing at (510) 238-3970 or addressed to the following:

City of Oakland
Department of Contracting & Purchasing
Social Equity Division
250 Frank Ogawa Plaza # 3341
Oakland, CA 94612

ATTACHMENT 3

CITY OF OAKLAND LABOR COMPLIANCE PROGRAM IMPLEMENTATION PLAN & OPERATIONS MANUAL

INTRODUCTION

The City of Oakland's Department of Contracting & Purchasing, Social Equity Division is responsible for educating, assisting, monitoring and enforcing prevailing wage requirements and applicable labor laws to ensure that all contractors working on City projects are in compliance with State (California Labor Code Chapter 1 of Part 7 of Division 2) and Federal (Code of Federal Regulations 29) prevailing wage statutes and regulations.

This program is applicable to all public works projects awarded by the City of Oakland on or after (date), using funds derived from any bond issued by the state to fund public works projects. California Labor Code Section 1770, et seq., require contractors on public works projects pay their workers based on the prevailing wage rates which are established and issued by the Department of Industrial Relations, Division of Labor Statistics and Research.

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1. Payment of applicable general prevailing wage rates.
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4. Monitoring City construction sites for the verification of proper payments of prevailing wage rates and work classification.
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Prevailing wage information may also be obtained via the internet at: www.dir.ca.gov. The City has instituted a Labor Compliance Program (LCP) and all contractors who perform work on projects covered by the LCP with this awarding body will be subject to the terms of that LCP.

As a condition to receiving progress payments, final payment and payment of retention on any and all projects on which the payment of prevailing wages is required, the contractor agrees to present to the City, along with its request for payment, all applicable and necessary certified payrolls and other required documents for the time period covering such payment request. The City shall withhold any portion of a payment, including the entire payment amount, until certified payroll forms and other required LCP documents are properly submitted. In the event that certified payroll forms do not comply with the requirements of Labor Code Section 1720 et seq., or wage violations are identified by the City, the City may continue to hold sufficient funds to cover estimated wages and penalties under the contract.

SECTION VI - POST AWARD MEETING

After the City awards the public works contract, and prior to the commencement of the work, a Post Award meeting may be conducted with the contractor and subcontractors for the particular project. The general contractor is responsible to see that the information provided at the meeting, relating to Labor Compliance Program (LCP) requirements, is distributed to its subcontractors.

At that meeting, the City will discuss the federal and state labor law requirements applicable to the contract, including prevailing wage requirements, the respective record keeping responsibilities, the requirement for the submittal of certified payroll records to, the prohibition against discrimination in employment and other items required to be covered at the meeting.

At the Post Award meeting, each contractor and subcontractor will be given 2 copies of the form "Checklist of Labor Law Requirements" (available at

http://www.dir.ca.gov/DAS/DAS_BuildingCompliance/Contractors/ChecklistLaborLawReq.pdf) The checklist is a brief summary of the labor laws which will be reviewed in the Post Award meeting. At the end of the meeting 1 copy of the checklist shall be completed and signed by a representative of the contractor or a representative of each subcontractor who is present, and by the City's representative. That signed checklist shall then be turned in to the City.

Contractors are referred to the DIR website at www.dir.ca.gov for updated prevailing wage information, apprenticeship regulations, forms, etc. And, the contractor is provided with information regarding the LCP contact person assigned to the specific project. Contractors are reminded that all of the steps required of the Labor Compliance Program are the same steps currently required on all prevailing wage projects. It is just that the LCP now requires that all the documentation be submitted and reviewed.

The contractors and subcontractors present at the Post Award meeting will be given the opportunity to ask questions of the City relative to the items contained in the Labor Law Requirements Checklist.

SECTION VII - REVIEW OF CERTIFIED PAYROLL RECORDS

Certified Payroll Records Required

The contractor and each subcontractor shall maintain payrolls and basic records (timecards, canceled checks, cash receipts, trust fund forms, accounting ledgers, tax forms, superintendent and foreman daily logs, etc.) during the course of the work and shall preserve them for a period of three (3) years thereafter for all trades workers working at the City's project sites. Such records shall include the name, address, and social security number of each worker, his or her classification, a general description of the work each employee performed each day, the rate of pay (including rates of contributions for, or costs assumed to provide fringe benefits), daily and weekly number of hours worked, deductions made, and actual wages paid.

Electronic Payroll Submittals.

The Contractor shall register for and use the City's selected electronic certified payroll tracking system— LCPtracker, a Labor Compliance software program. This software is a web-based system accessible provided by an independent company on the World Wide Web. The website address (http://www.fminternational.com/labor_compliance.htm) may be accessed for general information and an introductory product tour.

The Contractor and all subcontractors must submit all certified payrolls via the LCPtracker. system. The Contractor and each subcontractor will be given a special **Log-On** identification number and a password to access the City's reporting system. The Contractor shall contract with LCPtracker for the entire duration of project construction. In June 2005 the monthly charge to Contractors is \$80 per month for all contracts \$5 million and below. Contract valued over and above that amount are charged \$160; subcontractors will not be charged for this service. Cost for data entry will remain

in effect until we receive a notice of completion. The first payment is due within 30 days of the Notice to Proceed date. Subsequent payments are due every thirty days or the 20th of the month, whichever comes first. Remittance should be made payable to the City of Oakland (reference the project number and the month for which the payment is being made)

The advantages to this required service are:

- elimination of inaccurate certified payroll submittals;
- elimination of the need to submit hard copies of certified payrolls,
- identification of prevailing wage irregularities;
- at-a-glance assessment of compliance with the Local Employment Program (LEP) and the 15% Apprenticeship Program; and
- the elimination of potential delays in progress payments resulting from rejected certified payroll(s).

To assist contractors and subcontractors in this process, on-line training is available via the LCPtracker website, twenty-four hours a day. Also, a City personal computer with online capability to access LCPtracker is available, as needed, Monday through Friday between the hours of 10:00 am and 4:30 pm. To arrange additional training on the use of LCPtracker or to use the City's computer, the Contractor's payroll resource (staff or business service) may contact the Department of Contracting of Contracting and Purchasing, Social Equity Division, Contract Compliance Unit, Office of the City Administrator at 250 Frank Ogawa Plaza, 3rd Floor, Suite 3341, telephone (510) 238-3970.

While the submission of hard copies of certified payrolls is no longer necessary with the implementation of this program, contractors and subcontractors will continue to be required to submit a signed, original affidavit made under penalty of perjury that states that the information contained in each submitted LCPtracker payroll record is true and correct.

Electronic submittal of weekly payroll information is consistent with California Department of Industrial Relation Public Works payroll reporting requirements.

Payment: The payment for Electronic Payroll Submission shall constitute full payment for all labor, materials, fees and incidentals to perform the work of this subsection and shall be considered as included in the lump sum price for the construction of the project and no extra payment will be made therefore.

For weeks in which a contractor/subcontractor is not working on a project, an electronic Statement of Non-Performance is required. Once a particular contractor/subcontractor has completed their work, the last Certified Payroll submitted should be identified as the "Final" Certified Payroll.

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

(a) The reports must contain all of the information required by Labor Code Section 1776, with the information organized in a manner that is similar or identical to how the information is reported on the Department of Industrial Relations' suggested "Public Works Payroll Reporting Form" (Form A-1-131 available at <http://www.dir.ca.gov/dlse/DLSEFormA-1-131.pdf>);

(b) The reports shall be in a format and use software that is readily accessible and available to contractors, awarding bodies, Labor Compliance Programs, and the Department of Industrial Relations;

(c) Reports submitted to an awarding body, the Division of Labor Standards Enforcement, or other entity within the Department of Industrial Relations must be either (1) in the form of a non-modifiable image or record that bears an electronic signature or includes a copy of any original certification made on paper, or alternatively (2) printed out and submitted on paper with an original signature;

(d) The requirements for redacting certain information shall be followed when certified payroll records are disclosed to the public pursuant to Labor Code Section 1776(e), whether the records are provided electronically or as hard copies; and

(e) No contractor or subcontractor shall be mandated to submit or receive electronic reports when it otherwise lacks the resources or capacity to do so, nor shall any contractor or subcontractor be required to purchase or use proprietary software that is not generally available to the public.

Full Accountability

Each individual, laborer or craftsperson working on a public works contract must appear on the payroll. The basic concept is that the employer who pays the tradesworker must report that individual on its payroll. This includes individuals working as apprentices in an apprenticeable trade. Owner-operators are to be reported by the contractor employing them; rental equipment operators are to be reported by the rental company paying the workers' wages.

Sole owners and partners who work on a contract must also submit a certified payroll record listing the days and hours worked, and the trade classification descriptive of the work actually done. The contractor shall make the records required under this section available for inspection by an authorized representative of the City and the Department of Industrial Relations, and shall permit such representatives to interview tradesworkers during working hours on the project site.

Responsibility for Subcontractors

The contractor shall be responsible for ensuring adherence to labor standards provisions by its subcontractors in the manner specified by Labor Code Section 1775. Moreover, the contractor is responsible for Labor Code violations by its subcontractors of which it has knowledge.

- a. The contractor shall monitor the payment of the specified general prevailing per diem wages by each subcontractor to its employees by periodic review of the subcontractor's certified payroll records.
- b. Upon becoming aware of a subcontractor's failure to pay the specified prevailing rate of wages, the contractor shall diligently take corrective action to halt or rectify the failure, including, but not limited to, retaining sufficient funds due the subcontractor for work performed on the public works project (upon receipt of notification that a wage complaint has been resolved, the contractor shall pay any money retained from and owed to a subcontractor).
- c. Prior to making final payment to the subcontractor for work performed on the public works project, the contractor shall obtain an affidavit signed under penalty of perjury from the subcontractor that the subcontractor has paid the general prevailing rate of per diem wages to its employees on the public works project, as well as any penalties which may have been imposed for working hours violations (Labor Code Section 1775 and 1813).

Payment to Employees

Employees must be paid unconditionally, the full amounts which are due and payable for the period covered by the particular payday. An employer must, therefore, establish a fixed workweek (i.e., Sunday through Saturday). On each and every payday, each worker must be paid all sums due and must be provided with an itemized wage statement.

If an individual is called a subcontractor, when, in fact, he/she is merely a journey level mechanic supplying only his/her labor, such an individual would not be deemed a bona fide subcontractor and must be reported on the payroll of the contractor who contracted for his or her services as a tradesworker. Moreover, any person who does not hold a valid contractor's license cannot be a subcontractor, and anyone hired by that person is the worker or employee of the contractor who contracted for his or her services for purposes of workers' compensation laws.

A worker's rate for straight time hours must equal or exceed the rate specified in the contract by reference to the Prevailing Wage Rate Determinations for the class of work actually performed. Any work performed on Saturday, Sunday, and/or a holiday, or a portion thereof, must be paid the prevailing rate established for those days regardless of the fixed workweek. The hourly rate for hours worked in excess of 8 hours in a day or 40 hours in a workweek shall be premium (overtime) pay. All work performed in excess of eight hours per day, 40 hours per week, on Saturday, on Sunday, and on holidays shall be paid in accordance with the applicable Prevailing Wage Determination. Additionally, appropriate shift pay and applicable travel and subsistence pay is also required.

Maintaining Records:

The City shall maintain all records relating to any project subject to Labor Compliance for a period of three (3) years from the date of the filing of the Notice of Completion of the Project. In the event no Notice of Completion is filed, the City shall maintain all LCP records relating to a specific project for three (3) years from the date of actual completion or beneficial occupancy, whichever is later.

Apprentices

Apprentices shall be permitted to work as such only when they are registered, individually, under a bona fide apprenticeship program registered and approved by the State Division of Apprenticeship Standards. The allowable ratio of apprentices to journeypersons in any craft/classification shall not be greater than the ratio permitted to the contractor as to its entire workforce under the registered program. Any worker listed on a payroll at an apprentice wage rate who is not registered shall be paid the journey level wage rate determined by the Department of Industrial Relations for the classification of the work he/she actually performed.

The contractor shall furnish written evidence of the registration (i.e., Apprenticeship Agreement or Statement of Registration) of its training program and apprentices, as well as the ratios allowed and the wage rates required to be paid thereunder for the area of construction, prior to using any apprentices in the contract work.

Pre-apprentice trainees, trainees in non-apprenticeable crafts, and others who are not duly registered will not be permitted on public works projects unless they are paid full prevailing wage rates as journey-persons. Compliance with California Labor Code Section 1777.5 requires all public works contractors and subcontractors to:

1. Register the prevailing wage project (DAS-140 available at <http://www.dir.ca.gov/DAS/DASForm140.pdf>);
2. Request to Train apprentices on public works projects in a ratio to journeypersons as stipulated in the Apprenticeship Standards under which each Joint Apprenticeship Committee operates, but in no case shall the ratio be less than one (1) apprentice hour to each five (5) journeypersons hours worked on the project. (DAS-142 or equivalent documentation or the actual employment of apprentices).
3. Contribute to the training fund in the amount identified in the prevailing wage rate publication for journeypersons and apprentices. Where the trust fund administrators cannot accept the contributions, then payment shall be made to the California Apprenticeship Council, Post Office Box 420603, San Francisco, CA 94142; and
4. It should be noted that a prior approval for a separate project does not confirm approval to train on any other project. The contractor/subcontractor must check with the applicable Apprenticeship Committee to verify status.

b.) The Contract Work Hours and Safety Standards Act (CWHSSA) requires time and one-half pay for overtime as defined by the Federal government. In the event that this project is federally funded, an additional penalty of \$10/day per violation will be strictly enforced for under-payment of the overtime rate. Intentional violations of CWHSSA standards are considered a Federal criminal misdemeanor.

c.) California Labor Code Section 1778 makes it a felony for anyone to require any laborer or mechanic employed on a public works project to *kickback* any portion of their wages. The Copeland (Anti-Kickback) Act is the federal statute that makes it a felony to require any laborer or mechanic employed on a Federal or Federally Assisted public works project to return any portion of his/her wages in connection with services rendered upon any public work.

Payroll Review and Audits

Payroll review and audits shall be conducted by the Department of Contracting & Purchasing (or their trained designee), and may also be conducted at the request of the Labor Commissioner to determine whether all tradesworkers on project sites have been paid according to the prevailing wage rates.

The City's preference and recommended practice is to review all certified payroll for all employees for all weeks of work on a project at least once a month. However, the CCO shall review the certified payrolls not less than once a month. The CCO shall review payrolls for at least one full week of payroll for each contractor or subcontractor performing work on the applicable project for each month in which work was performed on the project.

1. Audit of the obligation to pay the prevailing per diem wage means review and audit of weekly-certified payroll records for compliance with:
 - a. All elements defined as the General Prevailing Rate of Per Diem Wages in Title 8 CCR Section 16000, which were determined to be prevailing in the Director's determination in effect on the date of the call for bids, or as reflected in any subsequent revised determination issued by the Director's office, copies of which are shall be posted at the public works job site;
 - b. All elements defined as Employer Payments to Workers set forth in Title 8 CCR Section 16000, which were determined to be prevailing in the Director's determination in effect on the date of advertisement, or as reflected in any subsequent revised determination issued by the Director's office, copies of which shall be posted at the public works job site.

The CCO shall also seek verification of proper payment of prevailing wages to workers by randomly requesting paycheck verification for at least one worker from each contractor/subcontractor for at least one weekly period within each month.

2. Audit of the obligation to employ and train apprentices means inquiry to the program sponsor for the apprenticeable craft or trade in the area of the public work as to: whether contract award information was received (DAS-140), including an estimate of journey person hours to be performed and the number of apprentices to be employed; whether apprentices have been requested (DAS-142), and whether the request has been met; whether the program sponsor knows of any amounts received from the contractor or subcontractor for the training fund or the California Apprenticeship Council (CAC-2); and whether persons listed on the certified payroll in that craft or trade being paid less than the journey person rate are apprentices registered with that program and working under apprentice agreements approved by the Division of Apprenticeship Standards. Alternatively or in addition to inquiring of the program sponsor, the CCO shall, as appropriate, reference the DIR website for the listing of enrolled apprentices and any contribution alleged to have been made by a contractor on a CAC-2 form for the payment of training contributions.

DAS 140 - Register to Train – The City will look to receive a DAS-140 from each contractor for each apprenticeable craft employed on the project. The original DAS-140 should be sent within ten days of each contractor/subcontractor starting work on the project. A copy of DAS 140 forms should be turned in with each contractor's and subcontractor's first certified payroll. If the form is not completed correctly or is not submitted, the contractor/subcontractor will be notified of this deficiency and asked to take corrective action by completing and filing a correct DAS-140 form.

DAS 142 - Request apprentices - The City will look for either apprentices being employed on the project (through examination of certified payrolls) or look to receive a DAS-142 (or its equivalent) from the contractor/subcontractor for each apprenticeable trade employed on the project and confirmation that the DAS-142 form was sent to an appropriate apprenticeship committee. A contractor is **NOT REQUIRED** to use the DAS-142 form, but can document its request for apprentices by other means. However, if a contractor does use the 142 form (filling it out properly and filing it promptly), with a delivery receipt, the contractor is "legally presumed" to be in compliance.

Employ Apprentices in 1:5 ratio – To the extent that apprentices are available for employment, the Labor Code mandates that apprentices are employed in a 1:5 ratio. This means an average (calculated at the end of the project) of one apprentice hour for every 5 journeymen hours. Some approved Apprenticeship Standards recognize a different ratio and those other ratios may be used so long as the apprenticeship committee has DAS approval.

Pay correct apprenticeship rates - Apprenticeship wage rates will also be checked by the City against the applicable prevailing wage determination.

Pay correct training contribution (CAC 2) - The City will review and confirm that the training contributions set forth in the prevailing wage determination are paid to either an approved apprenticeship committee or to the California Apprenticeship Council. (CAC-2 contributions to be confirmed through DIR website.)

Additional Review: The City will also engage in the following additional review to determine LCP compliance:

Proper Licensing

Businesses and Professions Code Section 7000 et seq. requires all companies performing construction work to be properly licensed and bonded. The City will check the contractor's/subcontractor's license status through the Contractors State License Board website at: www.cslb.ca.gov. Contractors working without a valid license will be removed from the project.

Worker's Compensation Insurance

Labor Code Section 1861- All contractors and subcontractors employing workers on the project are required to provide worker's compensation coverage. The City will verify that all contractors have appropriate worker's compensation while employing workers on the project. This information can also be verified through the California Contractor's State Licensing Board website. Contractors who do not have worker's compensation for their employees will be removed from the project (recognizing that sole proprietor, owners, corporate officers and some related family members are excluded from worker's compensation requirements). Further, out of state contractors may be allowed to use their out of state workers compensation coverage for a period of up to 30 days.

Electrician Certification:

The Division of Apprenticeship Standards also requires that all electricians in the State of California possess adequate training to perform their job. As such, all electricians must fall into one of the following categories:

- Journeyman- Certified
- Journeyman- Trainee
- Apprentice

The City will check the status of all electrician employed by using the DAS website. Electricians which do not fall into one of these categories will be removed from the project. And, the incident will be reported to the DAS at the end of the project. The City shall also review and provide compliance review for all other items listed on the Checklist.

SECTION VIII - ONSITE JOB VISITS AND WORKER INTERVIEWS

Site Visits

1. Safety is the paramount factor for any site visit to any City of Oakland construction projects. Site monitor is expected to exercise reasonable caution at all times.
2. All personnel working on or visiting any City of Oakland construction sites are required to be properly identified and wear a visible, City-issued picture ID (badge). Additionally, all authorized personnel are required to wear hard hats and safety shoes.
3. Authorized personnel shall visit all sites on a non-interference basis and take a minimum amount of the workers' time for interview purposes. Each week upon arrival at a site, the site monitor will check in at the site superintendent's (contractor's) trailer to determine if the appropriate postings are on the jobsite. These include, but are not limited to:

EEO Posters

Prevailing wage sheets posted

Notice informing the employees that the project is subject to a Labor Compliance Program and providing the City's CCO contact information.

Other appropriate required postings required by law.

Interviewing

1. Not less than once a month, job site interviews of employees will take place. It is the City's policy to attempt to interview at least one employee from each contractor/ subcontractor who performs work on the project. With that goal in mind, interviews may be conducted on a weekly basis, but in no event less than monthly.
2. Once the CCO or his/her designee checks in with the site superintendent and obtains access to the site, the Interviewer will attempt to locate tradespersons working in clusters. For instance, several painters, electricians, roofers, etc. working in one area. The interviewer shall identify himself or herself as a City representative, and ask to speak to the employee for a few minutes. Interviews should not be conducted in an area or during a time when either the interviewer or the worker would be subject to injury due

These interviews are random; two or three tradespersons for each subcontractor is sufficient for one visit. Any persons missed are usually interviewed on subsequent visits. Thirty minutes of interviewing per site is typically sufficient, depending upon the site size and/or number of

subcontractors present. Contractor tradespersons should also be interviewed.

3. Using the Labor Compliance Site Visitation Interview form, each person will be asked the following: name, social security number, employer, fite (trade), rate of pay, and task being performed at the time of interview.

Guidelines for Interviewers:

- a. Should someone decline to speak with you, respect those wishes. If someone asks if this is union-related, tell them no. The City of Oakland works with both open and closed shop trades.
- b. If you try to interview someone who does not speak English and you cannot communicate in the appropriate language, try to locate a coworker who can interpret for you. If you find an entire crew unable to speak English and no interpreter, include this in your report to the CCO.
- c. If someone refuses to disclose his/her social security number to you, respect those wishes. However, assure that person that all information given is kept strictly confidential.
- d. If someone does not know their rate of pay (most tradespersons do not know the exact penny of wages earned), ask for an estimate. If the response is, "whatever prevailing wage is", so indicate on the form.
- e. If someone indicates that he/she is an apprentice, make sure that you ask him/her what period. These can be anywhere from 1st to 10th. If s/he's not sure, ask him/her how many years s/he's been apprenticed in the specific trade and/or to estimate and so indicate on the interview form.
- f. ALWAYS thank them for their time.
- g. Keep in mind that you are there to collect information only, do not tell them how to do their jobs. Should you witness what you consider a potentially unsafe or unwarranted condition, you are to contact the site inspector or job superintendent of your findings immediately and make a note on your site visitation log of what you observed. Upon your return to the office, report any unusual findings to the CCO.

Reporting

All original interview forms shall be reconciled against the certified payroll reports and any unusual findings to the CCO no later than five (5) days after review.

Daily Reports

The Daily Reports will be used by the CCO to cross check staffing on the various LCP projects. The Daily Reports should list those contractors and subcontractors present on the site on a specific day as well as the number of employees employed on the project by each contractor/subcontractor. While the Daily Reports are merely a “snap shot” of the project at the time of the report information, the Daily Reports are used by the City to determine if a Contractor has failed to properly list all employees performing work on the project.

Extended Audits

When the City finds a potential violation which leads it to believe that prevailing wages have not been properly paid and the documentation submitted by the contractor/subcontractor is inconclusive, the City will exercise its authority to conduct a full investigation to verify whether appropriate prevailing wages were paid on the project

1. **Requesting Additional Documentation from Contractor**
The City shall request additional documents in writing, listing the specific documentation requested. The City will also invoke the provisions of Labor Code Section 1776 in demanding that the documents be produced within 10 days.
2. **Conducting Additional Interviews**
Based on the City’s investigation, the City shall engage in additional interviewing of employees who worked on the project. These interviews may be conducted in person or via other means of communication (i.e. email, telephone, mail.)

SECTION IX – ENFORCEMENT

Duty of the Awarding Body

The City of Oakland, as the awarding body having an LCP, has a duty to enforce the Labor Code public works requirements (Chapter 1 of part 7 of Division 2 and Division 3 of the Labor Code).

Monthly Communication to the Contractor:

Upon completion of the monthly audit and review of certified payrolls, the City shall communicate with the prime contractor on the project as to all violations, inadequacies, or deficiencies for the prime contractor and any applicable subcontractor. The City shall create Monthly Audit Reports for each contractor/subcontractor on the project who has failed to submit correct LCP documentation and/or has failed to pay the applicable prevailing wage or comply with other LCP requirements.

If a contractor has no errors or incomplete information in the current month, but has outstanding items from a prior month, the City will continue to send a Monthly Audit

Report until full compliance has been met. The City's monthly report to the Contractor shall include:

- Name of Project
- Prime Contractor
- Subcontractor with outstanding violation
- Weeks of Certified Payrolls reviewed
- Any deficiency in paperwork

Incorrect or Missing:

- Certified Payrolls
- Fringe Benefit Statement
- DAS 140
- DAS 142
- CAC 2
- Identify any wage deficiencies, classification issues, etc.
- Direct Contractor to correct said deficiencies and provide documentation of corrective action.
- Invoke 1776 documents request – as needed.

Withholding Contract Payments When Payroll Records are Delinquent or Inadequate

1. "Withhold" means to cease payments by the awarding body, or others who pay on its behalf, or agents, to the contractor. Where the violation is by a subcontractor, the contractor shall be notified of the nature of the violation and reference made to its rights under Labor Code Section 1729. A release bond under Civil Code Section 3196 may not be posted for the release of the funds being withheld for the violation of the prevailing wage law.
2. "Contracts," except as otherwise provided by agreement, means only contracts under a single master contract, or contracts entered into as stages of a single project which may be the subject of withholding pursuant to Labor Code Sections 1720, 1720.2, 1720.3, 1720.4, 1771, and 1771.5;
3. "Delinquent payroll records" means those not submitted on the basis set forth in the City contract and the Labor Compliance Program;
4. "Inadequate payroll records" are any one of the following:
 - a. A record lacking the information required by Labor Code Section 1776;
 - b. A record which contains the required information but which is not certified, or certified by someone not an agent of the contractor or subcontractor;

- c. A record remaining uncorrected for ten (10) days after the awarding body has given the contractor notice of inaccuracies/omissions detected by audit or record review; provided, however, that prompt correction will stop any duty to withhold if such inaccuracies/omissions do not amount to 1 percent of the entire certified weekly payroll in dollar value and do not affect more than half of the persons listed as workers employed on that certified weekly payroll, as defined in Labor Code Section 1776 and Title 8 CCR Section 16401. Prompt correction will stop any duty to withhold if such inaccuracies are minimum.

Progress payments will be withheld if certified payrolls have not been properly submitted. A portion of a progress payment may be withheld by the City if potential wage violations have been identified, are not corrected, and could exceed the amount of applicable retention on the project. If the City does withhold any portion of a progress payment due to an identified prevailing wage violation, the contractor shall be notified in writing of such withholding and given an opportunity to have a meet and confer meeting/conference call with the City's representative not later than 15 days after the progress payment is withheld.

SECTION X - PROJECT CLOSE-OUT- FORFEITURES AND PENALTIES

Once the project has been completed, the City shall:

1. Write a 10-day letter to each contractor/subcontractor who still has outstanding documents or wage and apprenticeship violations requesting that the contractor provide any required documentation to the City or pay restitution due its employees within ten days from the date of the receipt of the letter. A copy of this letter will also be mailed to:
Subcontractor – Certified and Regular Mail
General Contractor – Certified and Regular Mail
2. After 10 business days, determine if all of items have been addressed. **IF NO WAGE VIOLATIONS HAVE OCCURRED** during the course of the project, and nothing is outstanding, the City shall close the project and **keep this data to reference in the City's Annual Report.**

If ANY WAGE VIOLATION HAS OCCURRED during the course of the project, then the City will assess penalties as follows:

- **Wage Violation – Labor Code 1775 - \$50 per day per worker per violation.** The City now has discretion to reduce or waive penalties. Reductions or waivers will only be made if the contractor meets the requirements of Labor Code Section 1775, subparagraph (b) i.e. good faith or inadvertent error, prompt correction and no additional violations. No reduction should be made if there are outstanding wages still due. Reasons

for reduction of penalties will be documented and included in Notice of Request for Forfeitures to the Labor Commissioner.

•**Overtime Violation** – Labor Code Section 1813 - \$25 per day per worker. Mandated by statute with no discretion for reduction. Even if certain union agreements allow for employees to work four days of 10 hours each day without overtime, it is the prevailing wage determination which will control in this instance with overtime pay being mandated after 8 hours worked in a day. Labor Code Section 1811.

•**Failure to Provide Certified Payrolls** (including fringe benefit statements, timecards, canceled checks, etc.) within 10 days of Request - Labor Code 1776 (g). The penalty of \$25 per day per worker continues until strict compliance is met (all documents delivered or certified payroll input into the City's LCP tracker). Before imposing 1776 penalties, the City will ensure that any request for documentation includes:

- Identification of the specific documents requested
- Identification that the request is made pursuant to section 1776(g) of the Labor Code and that penalties of \$25 per day per worker will be imposed until there is strict compliance
- Delivery of the notice must be by certified mail or other means where the contractor signed a receipt of the notice

•**Willful and/or Repeat Offenders** will be subject to maximum penalties as stated above and a recommendation of debarment from public works will be made to the DIR.

•**Liquidated Damages** – If prevailing wages remain unpaid 60 days after a Notice to Withhold is issued to the contractor, the contractor shall be assessed liquidated damages equal to the amount of any unpaid wages. The City shall hold appropriate funds at the conclusion of the project to cover all wages due, penalties and liquidated damages.

•**Apprenticeship Violation** - Labor Code Section 1777.7 \$100 - \$300 per calendar day of noncompliance and debarment up to 3 years. This may include failure to pay training contributions, employ apprentices at the ratio required, etc. **The City does not have the authority to impose penalties for Apprenticeship Violations, but instead will file a Public Works Complaint detailing the violation and submitting relevant documentation of the violations to the DAS.**

• **Unlicensed Contractor** – Labor Code Section 1021. Any contractor working without a valid contractor license shall be subject to a penalty of \$200 per day per worker. This is not a penalty that LCPs enforce. Rather, the City will file a complaint with the DIR, as well as with the Contractors State License Board (CSLB).

3. If the total wages and penalties outstanding and due are less than \$1,000, then the CCO will proceed to issue a Notice of Withhold to the Contractor/and any applicable subcontractor.
4. If wages and penalties exceed \$1,000, the City will complete the Request for Forfeiture form (see Appendix D) and send it with the appropriate documentation to the Labor Commissioner for review and decision. “LCP Request for Forfeitures” and “Penalty Worksheet” spreadsheet will be completed in full. Penalty worksheet will list dates of violation and include summary worksheet, including the following:
 - a. Audit summary (City’s penalty worksheet summary and individual employee penalty worksheets)
 - b. 1st Bid Advertisement Publication Notice of Completion (if filed)
 - c. Scope of Work
 - d. Complaint forms and declarations, if any, from third parties or employees.

The close out documents will be sent to the following:

General Contractor – certified and regular mail;
Affected Subcontractor – certified and regular mail;
Labor Commissioner - Overnight delivery (with signature required) or certified Mail

5. The Labor Commissioner then has 30 days to respond. (Once the City has had a response from the Labor Commissioner, a Notice to Withhold shall issue. In the event the Labor Commissioner does not respond within 30 days, the City shall then issue a Notice to Withhold based on the information provided in the Request for Forfeiture Notice. The Notice to Withhold shall be sent as follows:

General Contractor –certified and regular mail
Affected Subcontractor – certified and regular mail

6. Allow 60 days for the contractor to contest the penalties. If the contractor contests the Notice to Withhold, then the City (upon receipt of the written Request for Review) will promptly forward the Request for Review to the City Attorney’s Office.

- (a) Potential Settlement Options – The City does have the ability to engage in settlement discussions and will do so before the filing of a Request for Forfeiture. Specifically, once the City has determined an actual violation has occurred, notification will be provided to the affected contractor/subcontractor with an opportunity to correct the wage deficiency.

The contractor/subcontractor shall have at least 10 days from such notification to submit information/documentation that such error was made in good faith and corrected promptly. If the correction is made promptly and a waiver of penalties is determined, no Request for Forfeiture will be made to the Labor Commissioner. However, the City will keep this information and include it with its Annual Report. When considering the compromise or waiver of penalties, the City will consider the nature of the violation, good faith error versus a knowing violation. Any contractor with an outstanding wage violation at the completion of the project (after being provided the information of the violation and at least 10 days to correct that violation) is NOT eligible for a reduction or waiver of penalties.

After a Notice to Withhold is issued, a contractor or subcontractor may request a settlement meeting pursuant to Labor Code Section 1742.1(b). The LCP shall have and exercise the same rights and responsibilities as the Enforcing Agency (as defined in section 17202(f) of Title 8 of the California Code of Regulations) in responding to such a request for review, including but not limited to the obligations to (i) serve notices, (ii) transmit the Request for Review to the hearing office, and (iii) provide an opportunity to (a) review evidence in a timely manner, (b) participate through counsel in all hearing proceedings, and (c) meet the burden of establishing prima facie support for the Notice of Withholding of Contract Payments.

- (b) If a contractor or subcontractor seeks review of a Labor Compliance Program enforcement action, the Labor Commissioner may intervene to represent the Awarding Body, or to enforce relevant provisions of the Labor Code consistent with the practice of the Labor Commissioner, or both. Except in cases where the Labor Commissioner has intervened pursuant to CCR Title 8 Section 16439 subpart (b), the Labor Compliance Program shall have the authority to prosecute, settle, or seek the dismissal of any Notice of Withholding of Contract Payments issued pursuant to Labor Code Section 1771.6 and any review proceeding under Labor Code Section 1742, without any further need for approval by the Labor Commissioner. Whenever the LCP settles in whole or in part or seeks and

obtains the dismissal of a Notice of Withholding of Contract Payments or a review proceeding under Labor Code Section 1742, the LCP shall document the reasons for the settlement or request for dismissal and shall make that documentation available to the Labor Commissioner upon request.

7. If the 60-day time period expires and no request for review is filed, then the sums set forth in the Notice to Withhold are deemed forfeit to the City (except to the extent that any wages due must be turned over by the City to the affected employees. (If the employees cannot be located after a diligent search, then those wage funds are turned over to the Labor Commissioner.)

APPRENTICE/TRAINING VIOLATION:

- Unpaid training for any trade
- No DAS 140 form submitted
- No DAS 142 form submitted and no apprentices on the project
- Electrician certification violation

For any violation relating to apprenticeship or training, the City shall complete and file a Public Works Complaint with the Division of Apprenticeship Standards and enclose the applicable documentation.

The Public Works Complaint and applicable documents shall be sent to:

- General Contractor – certified and regular mail;
- Affected Subcontractor – certified and regular mail;
- DAS :

The Division of Apprenticeship Standards Public Works Division
P.O. Box 420603
San Francisco, CA 94142

Close Out Completion Report:

For each LCP project, the City Campus LCP shall prepare a Project Completion Report and keep such report in the applicable project file.

Third Party Requests for Payroll

When the City receives a request for certified payrolls of a contractor /subcontractor from a third party pursuant to Labor Code Section 1776, any records which the City makes available to such a third party shall be appropriately redacted pursuant to Labor Code Section 1776 (e).

Third Party Complaints

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

- (1) Within 15 days after receipt of the complaint, send a written acknowledgment to the complaining party that the complaint has been received and identifying the name, address, and telephone number of the investigator assigned to the complaint;
- (2) Within 15 days after receipt of the complaint, provide the affected contractor with the notice required under Labor Code section 1775(c) if the complaint is against a subcontractor;
- (3) Notify the complaining party in writing of the resolution of the complaint within ten days after the complaint has been resolved by the Labor Compliance Program;
- (4) Notify the complaining party in writing at least once every 30 days of the status of a complaint that has not been resolved by the Labor Compliance Program; and
- (5) Notify the complaining party in writing at least once every 90 days of the status of a complaint that has been resolved by the Labor Compliance Program but remains under review or in litigation before another entity.

SECTION XI -NOTIFICATION OF CONTRACTOR AND APPEAL RIGHTS OF PROGRAM ENFORCEMENT ACTION

Notice of Withholding of Contract Payments

After determination of the amount of forfeiture by the Labor Commissioner, the City shall provide notice of withholding of contract payments to the contractor and subcontractor, if applicable. The notice shall be in writing and shall describe the nature of the violation and the amount of wages, penalties, and forfeitures withheld. Service of the notice shall be completed pursuant to Section 1013 of the Code of Civil Procedure by first-class and certified mail to the contractor and subcontractor, if applicable. Notice to Contractor shall be deemed notice to its performance bond surety. The notice shall advise the contractor and subcontractor, if applicable, of the procedure for obtaining review of the withholding of contract payments. The awarding body shall also serve a copy of the notice by certified mail to any bonding company issuing a bond that secures the payment of wages covered by the notice and to any surety on such bond, if their identities are known to the awarding body.

Review of NWCP

- I. An affected contractor or subcontractor may obtain review of a NWCP under this chapter by transmitting a written request to the office of the LCP that appears on the NCWP within 60 days after service of the NWCP. If no hearing is requested within 60 days after service of the NWCP, the NWCP shall become final.

2. Within five days following the receipt of the request for review, the CCO shall transmit to the City Attorney's Office the request for review and copies of the Notice of Withholding of Contract Payments, any audit summary that accompanied the notice, and a proof of service or other documents showing the name and address of any bonding company or surety that secures the payment of the wages covered by the notice. DCP shall complete and serve a Notice of Transmittal on the DIR and the applicable contractor(s) within ten days of the date the letter requesting review by the contractor was delivered to the CCO at the applicable campus.
3. Upon receipt of a timely request, a hearing shall be commenced within 90 days before the Director of DCP, who shall appoint an impartial hearing officer possessing the qualifications of an administrative law judge pursuant to subdivision (b) of Section 11502 of the Government Code.

The appointed hearing officer shall be an employee of the department, but shall not be an employee of the Division of Labor Standards Enforcement. The contractor or subcontractor shall be provided an opportunity to review evidence to be utilized by the LCP at the hearing within 20 days of the receipt of the written request for a hearing. Any evidence obtained by the CCO subsequent to the 20-day cutoff shall be promptly disclosed to the contractor or subcontractor. A copy of a Notice of Opportunity to Review Evidence Pursuant to Labor Code Section 1742(b) form is available at <http://www.dir.ca.gov/lcp/LCPEnforcementFormsResources.htm>.

The contractor or subcontractor shall have the burden of proving that the basis for the NWCP is incorrect. The NWCP shall be sufficiently detailed to provide fair notice to the contractor or subcontractor of the issues at the hearing. Pursuant to Labor Code Section 1742.1, there shall be no liability for liquidated damages if the full amount of the assessment or notice, including penalties has been deposited by the contractor with the Department of Industrial Relations within 60 days following service of Notice to Withhold.

Within 45 days of the conclusion of the hearing, the Director shall issue a written decision affirming, modifying, or dismissing the assessment. The decision of the Director shall consist of a notice of findings, findings, and an order. This decision shall be served on all parties pursuant to Section 1013 of the Code of Civil Procedure by first-class mail at the last known address of the party on file with the LCP. Within 15 days of the issuance of the decision, the Director may reconsider or modify the decision to correct an error, except that a clerical error may be corrected at any time. The Director has adopted regulations setting forth procedures for hearings under this subdivision.

4. An affected contractor or subcontractor may obtain review of the decision of the Director by filing a petition for a writ of mandate to the appropriate superior court pursuant to Section 1094.5 of the Code of Civil Procedure within 45 days after service of the decision. If no petition for writ of mandate is filed within 45 days after service of the decision, the order shall become final. If it is claimed in a petition for writ of mandate that the findings are not supported by the evidence, abuse of discretion is established if the court determines that the findings are not supported by substantial evidence in the light of the whole record.
5. A certified copy of a final order may be filed by the Labor Commissioner in the office of the clerk of the superior court in any county in which the affected contractor or subcontractor has property or has or had a place of business. The clerk, immediately upon the filing, shall enter judgment for the state against the person assessed in the amount shown on the certified order.
6. A judgment entered pursuant to this procedure shall bear the same rate of interest and shall have the same effect as other judgments and shall be given the same preference allowed by law on other judgments rendered for claims for taxes. The clerk shall not charge for the service performed by him or her pursuant to this section.
7. This procedure shall provide the exclusive method for review of a NWCP by the City to withhold contract payments pursuant to Section 1771.7

Withholding of Forfeited Sums

1. Before making payments to the contractor of money due under a contract for public work, the City shall withhold and retain from sums owing Contractor, if any, all amounts required to satisfy the NWCP. The amounts required to satisfy the NWCP shall not be disbursed by the City until receipt of a final order that is no longer subject to judicial review.
2. Pending a final order, or the expiration of the time period for seeking review of the Notice of the Withholding, the City shall not disburse any contract payments withheld.
3. From the amount recovered, the wage claim shall be satisfied prior to the amount being applied to penalties. If insufficient money is recovered to pay each worker in full, the money shall be prorated among all workers employed on the public works project who are paid less than the prevailing wage rate. Such workers shall have **PRIORITY** over all Stop Notices filed against the prime contractor.

4. Wages for workers who cannot be located shall be placed in the Industrial Relations Unpaid Fund and held in trust for the workers pursuant to Section 96.7. Penalties shall be paid into the General Fund of the City that has enforced this chapter pursuant to Section 1771.7.
5. If insufficient funds are withheld, recovered, or both, to pay each underpaid worker in full, the money shall be prorated among all said underpaid workers.
6. Where the involvement of the Labor Commissioner has been limited to a determination of the actual amount of penalty, forfeiture or underpayment of wages, and the matter has been resolved without litigation by or against the Labor Commissioner, the Labor Compliance Program shall deposit penalties and forfeitures with the City.

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

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

SECTION XII - FEDERALLY FUNDED/ASSISTED CONSTRUCTION PROJECTS

Projects receiving full or partial federal funds are subject to the regulations listed below, in addition to any and all applicable California Labor requirements.

1. DAVIS-BACON REGULATIONS

The U.S. Department of Labor (DOL) has published rules and instructions concerning Davis-Bacon and other labor laws in the Code of Federal Regulations (CFR) and can be found in Title 29 CFR Parts 1, 3, 5, 6 and 7. Part 1 explains how the DOL establishes and publishes Davis-Bacon Act wage determinations and provides instructions on how to use the determinations. Part 3 describes the Copeland Act requirements for payroll deductions and the submission of weekly certified payroll reports. Part 5 covers the labor standards provisions that are in each contract relating to Davis-Bacon Act wage rates and the responsibilities of contractors and contracting agencies to administer and enforce the provisions. Part 6 provides for administrative proceedings enforcing Federal labor standards on construction and service contracts. Part 7 sets parameters for due process

procedures before the Wage Appeals Board (renamed Administrative Review Board). These regulations are used as the basis for administering and enforcing the laws.

The Davis-Bacon Act

The Davis-Bacon Act requires the payment of prevailing wage rates (which are determined by the DOL) to all laborers and mechanics on Federal construction projects in excess of \$2,000. Construction includes alteration and/or repair, including painting and decorating, of public buildings or public works.

The Contract Work Hours and Safety Standards Act (CWHSSA)

CWHSSA requires time and one-half pay for overtime (O/T) hours (over 40 hours in any work week) worked on the covered project. The CWHSSA applies to both direct Federal contracts and to indirect Federally-assisted contracts *except* where the assistance is solely in the nature of a loan guarantee or insurance. CWHSSA violations carry a liquidated damages penalty (\$10/day per violation). Intentional violations of CWHSSA standards are considered a Federal criminal misdemeanor.

The Copeland Act (Anti-Kickback Act)

The Copeland Act makes it a crime for anyone to require any laborer or mechanic (employed on a Federal or Federally-assisted project) to *kickback* any part of their wages. The Copeland Act also requires every employer (contractors and subcontractors) to submit weekly certified payroll reports (CPRs).

The Fair Labor Standards Act (FLSA)

The FLSA contains Federal minimum wage rates and overtime (O/T) requirements. These requirements generally apply to any labor performed and may be *pre-empted* by other Federal standards such as the Davis-Bacon Act prevailing wage requirements and CWHSSA O/T provisions. Only the Department of labor has the authority to administer and enforce the FLSA. The Department of Contracting & Purchasing (DCP) will refer any possible FLSA violations that are found on projects to the DOL.

II. CONSTRUCTION CONTRACT PROVISIONS

Each contract subject to Federal (Davis-Bacon) labor standards requirements must contain contract provisions containing labor standards clauses and a Davis-Bacon Wage Decision. These documents are bound into the contract specifications.

The Labor Standards Clauses

The labor standards clauses describe the responsibilities of the contractor concerning Davis-Bacon wages and obligate the contractor to comply with the labor requirements. The labor standards clauses also provide for remedies in the event of violations, including withholding from payments due to the contractor to ensure the payment of wages or liquidated damages which may be found due. These contract clauses enable the contract administrator to enforce the Federal labor standards applicable to the project.

Davis-Bacon Wage Decisions

The Davis-Bacon Wage Decision is a listing of various construction work classifications such as Carpenter, Plumber, and Electrician, and the minimum wage rates (and fringe benefits, where prevailing) that employees performing work in those classifications must be paid.

SECTION XIII - ANNUAL REPORTS

Annual Report on the Labor Compliance Program to the Director of the Department of Industrial Relations.

DCP will prepare and submit to the Director of the Department of Industrial Relations an annual report (form LCP-AR1 available at http://www.dir.ca.gov/lcp/LCP-AR1-AB_limited.doc.) on the operation of its Labor Compliance Program, within 60 days after the end of its fiscal year. The annual report will contain, as a minimum, the following information:

1. The LCP contact person;
2. An itemized list of public works contracts awarded after (date), and within the past 12 months, using funds derived from any bond issued by the state to fund public works projects, the bid advertisement date, prime contractor and contract amount for each such project, and their total value;
3. A summary of wages due to workers resulting from failure by contractors to pay prevailing wage rates and all penalties assessed and/or recovered;
4. An itemized summary of those violations for which forfeiture was not requested;
5. An itemized summary of those violations for which forfeiture was requested;
6. An itemized summary of all Labor Code section 1742 proceedings (contractor-requested hearing).

End.

OAKLAND CITY COUNCIL

RESOLUTION NO. 57103 C.M.S.

INTRODUCED BY COUNCILMAN

FROM C. 40

RESOLUTION CONFIRMING COMPLIANCE WITH LABOR CODE SECTIONS 1770, ET SEQ. FOR PROVIDING WAGE SCALE FOR PUBLIC WORKS CONSTRUCTION CONTRACTS AND REPEALING RESOLUTION NO. 56134 C.M.S..

JAN 12/81

--ooOoo--

WHEREAS, the City of Oakland is a body awarding contracts for public work; and

WHEREAS, it must comply with Labor Code Sections 1770, et seq., in awarding said contracts; now, therefore, be it

RESOLVED: That pursuant to Section 1773 of the Labor Code the City shall obtain the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in the locality in which the public work is to be performed for each craft, classification or type of workman needed to execute its public work contracts from the Director of the Department of Industrial Relations; and if the Director determines that the rate of prevailing wage for any craft, classification or type of workman is the rate established by a collective bargaining agreement, he may adopt such rate by reference as provided for in such agreement and such determination shall be effective for the life of such agreement or until the Director determines that another rate should be adopted; and be it

FURTHER RESOLVED: That health and welfare, pension, vacation, travel time, subsistence pay, apprenticeship or other training programs and any other employer payments shall be as established for each craft, classification or type of workman under any and all collective bargaining agreements that are (a) recognized as effective within said City of Oakland by the Associated General Contractors of California-East Bay and Central Coast Districts and the Alameda County Building and Construction Trades Council, and (b) approved by the Construction Industry Stabilization Board or the Pay Board, as required; and be it

FURTHER RESOLVED: That hours of work per day or week shall be as established for each craft, classification or type of workman under those aforesaid collective bargaining agreements effective within said City of Oakland; and be it

FURTHER RESOLVED: That travel and subsistence pay needed to execute the work, as such travel and subsistence payments are defined in the applicable collective bargaining agreements filed in accordance with Section 1773.8 of the Labor Code shall be paid each workman. To establish such travel and subsistence payments for contracts entered into with said City of Oakland, the representative of any craft, classification or type of workman needed to execute the contracts is required to file fully executed copies of collective bargaining agreements for the particular craft, classification or type of work involved with the Department of Industrial Relations, State of California; such agreements filed within ten (10) days after their execution establish such travel and subsistence payments whenever filed thirty (30) days prior to the call for bids; and be it

FURTHER RESOLVED: That the contractor, or any subcontractor under him, shall comply with all provisions of Section 1777.5 of the Labor Code pertaining to the employment of apprentices on public works projects. In the event any contractor willfully fails to comply with Section 1777.5 he shall be denied the right to bid on a public works contract for a period of six (6) months from the date the determination is made. The interpretation and enforcement of Section 1777.5 shall be in accordance with rules

1408 1881

and procedures prescribed by the Apprenticeship Council; and be it

FURTHER RESOLVED: That all call for bids, bid specifications and contracts for public work awarded by said City of Oakland, California include a statement that copies of the prevailing rate of per diem wages are on file in the Office of Public Works and are available to any interested party on request; and a copy of the determination will be posted at each job site in order that the general rate of per diem wages will be known for each craft, classification or type of workman needed to execute the contract; and be it

FURTHER RESOLVED: That Resolution No. 56134 C.M.S., passed by the City Council of the City of Oakland on January 18, 1977 is hereby repealed.

IN COUNCIL, OAKLAND, CALIF., MAR 28 1978, 19

PASSED BY THE FOLLOWING VOTE:

AYES — CHIALVO, ENG, GILMORE, MAGGIORA, MOORE, OGAWA, SUTTER, VUKASIN
AND PRESIDENT WILSON -9

NOES — None

ABSENT — None

ABSTENTION — None

ATTEST: Leon Wilson
MAYOR OF THE CITY OF OAKLAND, CALIF

ATTEST: Charles Jameson
CITY CLERK AND CLERK OF THE COUNCIL
OF THE CITY OF OAKLAND, CALIF

REDEVELOPMENT AGENCY
OF THE CITY OF OAKLAND

87-4

RESOLUTION NO. _____ C. M. S.

INTRODUCED BY AGENCY MEMBER _____

RESOLUTION ESTABLISHING AN OAKLAND REDEVELOPMENT PREVAILING WAGE REQUIREMENT

WHEREAS, the Agency has determined that a prevailing wage requirement is necessary to protect local job opportunities and to stimulate the local economy; and

WHEREAS, the Agency has determined that a prevailing wage requirement should be uniformly applied to all its projects; now therefore, be it

RESOLVED: That the Agency adopts and is establishing a prevailing wage requirement that shall include the following provisions:

Oakland Redevelopment Prevailing Wage Requirement

(a) All workers performing construction work for the project, from the commencement of construction until the issuance of a final Certificate of Occupancy, shall be paid not less than the highest prevailing rate of per diem wages as determined and published by the California Department of Industrial Relations pursuant to Section 1773 of the Labor Code. Construction work includes all construction of building core and shell, tenant improvements and public works that are within the customary jurisdiction of the construction trades and crafts, whether performed on - or off-site. Off-site work, performed by Materialmen, as defined under California Law, is not covered by this resolution.

(b) This requirement shall apply to the employees of any Employer including the developer, any tenant of the project, any general contractor or subcontractor or other contractor engaged in construction for the project by the developer, including their successors and assignees, but shall not apply to supervisory or managerial personnel or to persons employed in the rental, operation or maintenance of the project.

(c) Prevailing wage rates for each employee shall be those wage rates as published by the Department of Industrial Relations on the date the employee commences work. The employer shall be responsible for checking on a quarterly basis whether the Department has determined that there has been an adjustment in the prevailing rate of per diem wages in the locality. In the event the Department has adjusted the prevailing rate, the Employer shall pay such rate, provided that in no event shall the Employer pay less than the prevailing rate previously determined. The prime rates for all covered workers in a prominent, visible and easily accessible place on the Project site.

(d) The Employer shall keep an accurate payroll record as specified in Labor Code Section 1776(a). Certified copies of the payroll records shall be available for inspection at all reasonable hours at a local office of the Employer. Copies of the records shall be provided upon request by a representative of the Agency granting the permits authorizing the project. Any worker, his authorized representative, or the public may request a copy of the records from the Agency. The addresses and social security numbers of employees may be masked or deleted so as to prevent disclosure in copies furnished to the public. The failure of the Employer to comply with

have not been paid.

(e) Nothing in this agreement shall prevent the employment of any number of properly registered apprentices, as defined in Chapter 4, Division 3 of the Labor Code. Every such apprentice shall be paid not less than the standard wage paid to apprentices under the regulations of the crafts or trade at which he is employed, and shall be employed only at the work of the craft or trade to which he is registered. The employment and training of each apprentice shall be in accordance with the provisions of the apprenticeship standards and apprentice agreements under which he is in training.

(f) The developer shall cause the provisions of this Requirement to be incorporated into each contract and subcontract, and lease agreement which would be subject to this requirement. In the event the provisions are not so incorporated, the Developer shall be liable to the worker in any action or proceeding for the difference between the prevailing wage rate required to be paid and the amount actually paid to the worker, including costs and attorney fees, as if the Developer were the actual Employer.

(g) This Prevailing Wage requirement will be monitored and enforced by the Oakland Redevelopment Agency. In addition to any other rights provided by California law to recover compensation, a worker that has been paid less than the prevailing wage rates shall have a right to commence an action or proceeding against the employer of the worker for the difference between the prevailing wage rates and the amount paid to such worker for each calendar day or portion thereof for which the worker was paid less than the compensation required to be paid under the provisions of this agreement. No issue other than that of the liability of the Employer for the amount of unpaid wages allegedly due shall be determined in such action or proceeding, and the burden shall be on the employer to establish that the amounts demanded are not due. A worker recovering any or all of the wages claimed to be due shall recover his costs and attorney fees in securing such recovery. Nothing in this section shall preclude its enforcement by the California Division of Labor Standards Enforcement.

(h) This Prevailing Wage Requirement requirement shall not apply to tenant improvements with a value of less than \$50,000.00, nor to tenant improvements for which the initial building permit for such work is issued more than one year after the certificate of occupancy is approved on the core and shell. The \$50,000.00 value shall be adjusted annually pursuant to the Consumer Price Index for the San Francisco/Oakland SMSA. The staff of the Oakland Redevelopment Agency shall report to the Agency on the effects of the prevailing wage requirement for tenant improvements after one year of operation.

I certify that the foregoing is a full, true and correct copy of a Resolution passed by the Redevelopment Agency of the City of Oakland, California.

on

January 20, 1987

ARRECE JAMESON
Agency Secretary

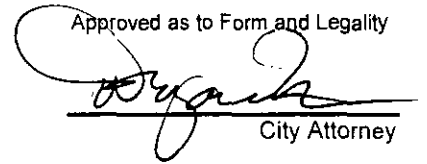
James A. [Signature]

Deputy

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2011 FEB 24 PM 5:44

Approved as to Form and Legality


City Attorney

OAKLAND CITY COUNCIL

RESOLUTION NO. _____ C.M.S.

RESOLUTION APPROVING THE STATE LABOR COMPLIANCE PROGRAM (LCP) FOR THE CITY OF OAKLAND

WHEREAS, the City of Oakland is a body awarding contracts for public works of improvement; and

WHEREAS, the Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006 (Proposition 84) require recipient awarding agencies to implement and enforce a Labor Compliance Program in accordance with Subdivision (b) of Labor Section 1771.5 for all public improvement projects using funds derived from Proposition 84; and

WHEREAS, the City Council wishes to implement and enforce a Labor Compliance Program (LCP) approved by the California Department of Industrial Relations (DIR); and

WHEREAS, all of the findings and conclusions made by the City Council pursuant to this Resolution are based upon all of the oral and written evidence presented to it and taken as a whole, and not based solely on the information provided in this Resolution; and

WHEREAS, prior to taking action, the City Council has reviewed and considered all of the information and data relating to the Labor Compliance Program proposed by staff, set forth in the attachment hereto labeled Attachment 2; now, therefore be it

RESOLVED: That the City Council finds that the Labor Compliance Program attached hereto and incorporated herein labeled Attachment 2 is consistent with the requirements of Proposition 84 and requirements of Subdivision (b) of Labor Section 1771.5 for a labor compliance program; and be it

FURTHER RESOLVED: That the City Council authorizes the City Administrator, or his designee, to submit said Labor Compliance Program to the State of California Department of Industrial Relations (DIR) for approval; and be it

FURTHER RESOLVED, that the City Council directs the City Administrator to implement said Labor Compliance Program approved hereunder on all contracts for public works of improvement of \$1,000 or more.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 20____

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, BRUNNER, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL, SCHAAF and PRESIDENT REID

NOES -

ABSENT -

ABSTENTION -

ATTEST: _____

LaTonda Simmons
City Clerk and Clerk of the Council
of the City of Oakland, California

**CITY OF OAKLAND
DEPARTMENT OF CONTRACTING
AND PURCHASING
LABOR COMPLIANCE PROGRAM**



**Prepared by the City of Oakland
JANUARY 2011**

City of Oakland Labor Compliance Program Manual

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**CITY OF OAKLAND
DEPARTMENT OF CONTRACTING &
PURCHASING
LABOR COMPLIANCE PROGRAM**

INTRODUCTION

The City of Oakland's Department of Contracting & Purchasing, Social Equity Division is responsible for educating, assisting, monitoring and enforcing prevailing wage requirements and applicable labor laws to ensure that all contractors working on City projects are in compliance with State (California Labor Code Chapter 1 of Part 7 of Division 2) and Federal (Code of Federal Regulations 29) prevailing wage statutes and regulations.

This program is applicable to all public works projects awarded by the City of Oakland on or after **August 1, 2010**. California Labor Code Section 1770, et seq., require contractors on public works projects pay their workers based on the prevailing wage rates which are established and issued by the Department of Industrial Relations, Division of Labor Statistics and Research.

SECTION I—Labor Compliance Program Requirements

a.) The City of Oakland's Labor Compliance Program (LCP) is certified under California Code of Regulations Chapter 8, Section 16425. The City of Oakland, Department of Contracting & Purchasing received initial certification on _____. In establishing the LCP, the City adheres to the statutory requirements as stated in California's labor Code Section 1771.5.

b) Pursuant to California Labor Code Section 1771.5, Oakland City Council and Redevelopment Agency Resolution Nos. 57103 C.M.S. and 87-4 respectively, the City of Oakland requires the payment of the general prevailing wage rate of per diem wages and

the general prevailing rate of per diem wages for holiday and overtime work on City projects.

c) California Labor Code Section 1776 requires contractors to keep accurate payroll records of trades workers on all public works projects and to submit copies of certified payroll records upon request.

d) California Labor Code Section 1777.5 requires contractors to employ registered apprentices on public works projects.

This **Labor Compliance Program** contains the labor compliance standards required by state and federal laws, regulations, and directives, as well as City policies and contract provisions, which include, but are not limited, to the following:

1. Payment of applicable general prevailing wage rates.
2. Employment of properly registered apprentices.
3. Providing certified payroll records upon request.
4. Monitoring City construction sites for the verification of proper payments of prevailing wage rates and work classification.
5. Conducting pre-bid meetings with contractors/subcontractors.
6. Withholding contract payments and imposing penalties for noncompliance.
7. Provide applicable reports to the California Labor Commissioner
8. Preparation and submittal of an Annual Report to the Department of Industrial Relations.

The City is committed to providing a current, complete and accurate LCP program for all applicable projects. As such, the City will update its administrative manual and LCP documents each time the Labor Code is amended and /or the DIR issues new regulations relating to LCPs. The City will also conduct periodic training of its LCP staff when the Labor Code and DIR regulations relating to LCP change and/or as needed.

SECTION I. PUBLIC WORKS SUBJECT TO PREVAILING WAGE LAWS

State prevailing wage rates as set forth in Labor Code Sections 1720, 1720.2, 1720.3, and 1771, have been made applicable to City construction contracts and include, but are not limited to, such types of work as construction, alteration, demolition, repair, installation or maintenance work. The Division of Labor Statistics and Research (DLSR) predetermines the appropriate prevailing wage rates for particular construction trades and crafts by county.

Types of Contracts to Which Labor Compliance Program Requirements Apply
As provided in Labor Code Section 1771.3(a) (2) and (b), 1771.5(c) and California Code of Regulations Section 16450 et seq., an awarding body Labor Compliance Program (LCP), shall apply to 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.

SECTION II. – EMPLOYMENT OF MINORS PROHIBITED

The employment of minors, under 16 years of age, is strictly prohibited in all building and construction work of any kind per California Code of Regulations Title 8, Chapter 6, Subsection 1, Article 1 § 11701(b)

SECTION III. – YOUTH EMPLOYMENT PROGRAMS

Regardless of age or status in a youth employment program, any workers employed on Public Works projects are subject to the payment of prevailing wages.

SECTION IV. – CASH PAYMENTS PROHIBITED

The City requires the contractor and all subcontractors to make weekly wage payments to all workers employed on the project. Payments shall be made by means of a check, money order or cashier's check. Cash payments are prohibited.

SECTION V- COMPETITIVE BIDDING ON CITY PUBLIC WORKS CONTRACTS – CONTRACT LANGUAGE

The City publicly advertises upcoming public works projects to be awarded according to a competitive bidding process. Further information regarding the requirements of the City's bidding process may be obtained by accessing the Department of Contracting & Purchasing website at <http://cces.oaklandnet.com/ContComp/> Any additional questions may be addressed to the Department of Contracting & Purchasing, Social Equity Division, 250 Frank Ogawa Plaza, Suite 3341., Oakland CA 94612.

All City bid advertisements (or bid invitations) and public works contracts requiring LCP compliance shall contain appropriate language concerning the requirements of the Public Works chapter of the Labor Code similar to the sample language listed below:

This project is subject to the requirements of Section 1770 et seq. of the California Labor Code requiring the payment of prevailing wages, the training of apprentices and compliance with other applicable requirements. The City shall provide upon request copies of the prevailing rate of per diem wages to be paid to all applicable workers. The City shall make available prevailing wage rate determinations to all interested parties upon reasonable request during normal business hours. Additionally, the contractor shall have a copy of the prevailing wage determinations posted in a conspicuous place at each job site.

Prevailing wage information may also be obtained via the internet at: www.dir.ca.gov. The City has instituted a Labor Compliance Program (LCP) and all contractors who perform work on projects covered by the LCP with this awarding body will be subject to the terms of that LCP.

As a condition to receiving progress payments, final payment and payment of retention on any and all projects on which the payment of prevailing wages is required, the contractor shall have provided to the City, along with its request for payment, all applicable and necessary certified payrolls and other required documents for the time period covering such payment request. The City shall withhold any portion of a payment, including the entire payment amount, until certified payroll forms and other required LCP documents are properly submitted. In the event that certified payroll forms do not comply with the requirements of Labor Code Section 1720 et seq., or wage violations are identified by the City, the City may continue to hold sufficient funds to cover estimated wages and penalties under the contract.

SECTION VI - POST AWARD MEETING

After the City awards the public works contract, and prior to the commencement of the work, a Post Award meeting shall be conducted with the contractor and subcontractors for the particular project. The general contractor is responsible to see that the information provided at the meeting, relating to Labor Compliance Program (LCP) requirements, is distributed to its subcontractors.

SECTION VII - REVIEW OF CERTIFIED PAYROLL RECORDS

Certified Payroll Records Required

The contractor and each subcontractor shall maintain payrolls and basic records (timecards, canceled checks, cash receipts, trust fund forms, accounting ledgers, tax forms, superintendent and foreman daily logs, etc.) during the course of the work and shall preserve them for a period of three (3) years thereafter for all trades workers working at the City's project sites. Such records shall include the name, address, and social security number of each worker, his or her classification, a general description of the work each employee performed each day, the rate of pay (including rates of contributions for, or costs assumed to provide fringe benefits), daily and weekly number of hours worked, deductions made, and actual wages paid.

Electronic Payroll Submittals.

The Contractor shall register for and use the City's selected electronic certified payroll tracking system—LCPTracker, a Labor Compliance software program. This software is a web-based system accessible provided by an independent company on the World Wide Web. The website address (http://www.fninternational.com/labor_compliance.htm) may be accessed for general information and an introductory product tour.

Full Accountability

Each individual, laborer or craftsperson working on a public works contract must appear on the payroll. The basic concept is that the employer who pays the trades worker must report that individual on its payroll. This includes individuals working as apprentices in

an apprenticeable trade. Owner-operators are to be reported by the contractor employing them; rental equipment operators are to be reported by the rental company paying the workers' wages.

Sole owners and partners who work on a contract must also submit a certified payroll record listing the days and hours worked, and the trade classification descriptive of the work actually done. The contractor shall make the records required under this section available for inspection by an authorized representative of the City and the Department of Industrial Relations, and shall permit such representatives to interview trades workers during working hours on the project site.

Responsibility for Subcontractors

The contractor shall be responsible for ensuring adherence to labor standards provisions by its subcontractors in the manner specified by Labor Code Section 1775. Moreover, the contractor is responsible for Labor Code violations by its subcontractors of which it has knowledge.

Payment to Employees

Employees must be paid unconditionally, the full amounts which are due and payable for the period covered by the particular payday. An employer must, therefore, establish a fixed workweek (i.e., Sunday through Saturday). On each and every payday, each worker must be paid all sums due and must be provided with an itemized wage statement.

If an individual is called a subcontractor, when, in fact, he/she is merely a journey level mechanic supplying only his/her labor, such an individual would not be deemed a bona fide subcontractor and must be reported on the payroll of the contractor who contracted for his or her services as a trades worker. Moreover, any person who does not hold a valid contractor's license cannot be a subcontractor, and anyone hired by that person is the worker or employee of the contractor who contracted for his or her services for purposes of workers' compensation laws.

A worker's rate for straight time hours must equal or exceed the rate specified in the contract by reference to the Prevailing Wage Rate Determinations for the class of work actually performed. Any work performed on Saturday, Sunday, and/or a holiday, or a portion thereof, must be paid the prevailing rate established for those days regardless of the fixed workweek. The hourly rate for hours worked in excess of 8 hours in a day or 40 hours in a workweek shall be premium (overtime) pay. All work performed in excess of eight hours per day, 40 hours per week, on Saturday, on Sunday, and on holidays shall be paid in accordance with the applicable Prevailing Wage Determination. Additionally, appropriate shift pay and applicable travel and subsistence pay is also required.

Maintaining Records:

The City shall maintain all records relating to any project subject to Labor Compliance for a period of three (3) years from the date of the filing of the Notice of Completion of the Project. In the event no Notice of Completion is filed, the City shall

maintain all LCP records relating to a specific project for three (3) years from the date of actual completion or beneficial occupancy, whichever is later.

Apprentices

Contractors shall comply with the requirements of the apprenticeship provisions of California Labor Code Section 1777.5.

Apprentices shall be permitted to work as such only when they are registered, individually, under a bona fide apprenticeship program registered and approved by the State Division of Apprenticeship Standards. The allowable ratio of apprentices to journeypersons in any craft/classification shall not be greater than the ratio permitted to the contractor as to its entire workforce under the registered program. Any worker listed on a payroll at an apprentice wage rate who is not registered shall be paid the journey level wage rate determined by the Department of Industrial Relations for the classification of the work he/she actually performed.

The contractor shall furnish written evidence of the registration (i.e., Apprenticeship Agreement or Statement of Registration) of its training program and apprentices, as well as the ratios allowed and the wage rates required to be paid thereunder for the area of construction, prior to using any apprentices in the contract work.

Pre-apprentice trainees, trainees in non-apprenticeable crafts, and others who are not duly registered will not be permitted on public works projects unless they are paid full prevailing wage rates as journey-persons. Compliance with California Labor Code Section 1777.5 requires all public works contractors and subcontractors to:

1. Register the prevailing wage project (DAS-140 available at <http://www.dir.ca.gov/DAS/DASForm140.pdf>);
2. Request to Train apprentices on public works projects in a ratio to journeypersons as stipulated in the Apprenticeship Standards under which each Joint Apprenticeship Committee operates, but in no case shall the ratio be less than one (1) apprentice hour to each five (5) journeypersons hours worked on the project. (DAS-142 or equivalent documentation or the actual employment of apprentices).
3. Contribute to the training fund in the amount identified in the prevailing wage rate publication for journeypersons and apprentices. Where the trust fund administrators cannot accept the contributions, then payment shall be made to the California Apprenticeship Council, Post Office Box 420603, San Francisco, CA 94142; and
4. It should be noted that a prior approval for a separate project does not confirm approval to train on any other project. The contractor/subcontractor must check with the applicable Apprenticeship Committee to verify status.

b.) The **Contract Work Hours and Safety Standards Act (CWHSSA)** requires time and one-half pay for overtime as defined by the Federal government. In the event that this project is federally funded, an additional penalty of \$10/day per violation will be strictly enforced for under-payment of the overtime rate. Intentional violations of CWHSSA standards are considered a Federal criminal misdemeanor.

c.) California Labor Code Section 1778 makes it a felony for anyone to require any laborer or mechanic employed on a public works project to *kickback* any portion of their wages. The **Copeland (Anti-Kickback) Act** is the federal statute that makes it a felony to require any laborer or mechanic employed on a Federal or Federally Assisted public works project to return any portion of his/her wages in connection with services rendered upon any public work.

Payroll Review and Audits

Payroll review and audits shall be conducted by the Department of Contracting & Purchasing (or their trained designee), and may also be conducted at the request of the Labor Commissioner to determine whether all trades workers on project sites have been paid according to the prevailing wage rates.

The City's preference and recommended practice is to review all certified payroll for all employees for all weeks of work on a project at least once a month. However, the CCO shall review the certified payrolls not less than once a month. The CCO shall review payrolls for at least one full week of payroll for each contractor or subcontractor performing work on the applicable project for each month in which work was performed on the project.

DAS 140 - Register to Train ~ The City will look to receive a DAS-140 from each contractor for each apprenticeable craft employed on the project. The original DAS-140 should be sent within ten days of each contractor/subcontractor starting work on the project. A copy of DAS 140 forms should be turned in with each contractor's and subcontractor's first certified payroll. If the form is not completed correctly or is not submitted, the contractor/subcontractor will be notified of this deficiency and asked to take corrective action by completing and filing a correct DAS-140 form.

DAS 142 - Request apprentices - The City will look for either apprentices being employed on the project (through examination of certified payrolls) or look to receive a DAS-142 (or its equivalent) from the contractor/subcontractor for each apprenticeable trade employed on the project and confirmation that the DAS-142 form was sent to an appropriate apprenticeship committee. **A contractor is NOT REQUIRED** to use the DAS-142 form, but can document its request for apprentices by other means. However, if a contractor does use the 142 form (filling it out properly and filing it promptly), with a delivery receipt, the contractor is "legally presumed" to be in compliance.

Employ Apprentices in 1:5 ratio – To the extent that apprentices are available for employment, the Labor Code mandates that apprentices are employed in a 1:5

ratio. This means an average (calculated at the end of the project) of one apprentice hour for every 5 journeymen hours. Some approved Apprenticeship Standards recognize a different ratio and those other ratios may be used so long as the apprenticeship committee has DAS approval.

Pay correct apprenticeship rates - Apprenticeship wage rates will also be checked by the City against the applicable prevailing wage determination.

Pay correct training contribution (CAC 2) - The City will review and confirm that the training contributions set forth in the prevailing wage determination are paid to either an approved apprenticeship committee or to the California Apprenticeship Council. (CAC-2 contributions to be confirmed through DIR website.)

SECTION VIII ONSITE JOB VISITS AND WORKER INTERVIEWS

DCP monitors labor standards compliance by conducting interviews with construction workers at the job site and reviewing payroll reports and initiates and oversees any enforcement actions that may be required.

SECTION IX – ENFORCEMENT

Duty of the Awarding Body

The City of Oakland, as the awarding body having an LCP, has a duty to enforce the Labor Code public works requirements (Chapter 1 of part 7 of Division 2 and Division 3 of the Labor Code).

SECTION X - PROJECT CLOSE-OUT- FORFEITURES AND PENALTIES

In accordance with Labor Code Section 1727, the City may withhold, from any monies payable on account of work performed by the Contractor or subcontractor, such sums as may administratively be determined to be necessary to satisfy any liabilities of the Contractor or its subcontractor for unpaid wages and liquidated damages as specified in this Section. In the event of failure to pay any laborer or mechanic, including any apprentices, employed or working on the site of the work, all or part of wages required by the contract, the city may, after written notice to the contractor (Notice of Withholding Contract Payments), take such action as may be necessary to cause the suspension of further payment, advance or guarantee of funds until such violations have ceased. Once the project has been completed, the City shall:

If ANY WAGE VIOLATION HAS OCCURRED during the course of the project, then the City will assess penalties as follows:

- **Wage Violation** – Labor Code 1775 - \$50 per day per worker per violation. The City now has discretion to reduce or waive penalties. Reductions or waivers will only be made if the contractor meets the requirements of Labor Code Section 1775,

subparagraph (b) i.e. good faith or inadvertent error, prompt correction and no additional violations. No reduction should be made if there are outstanding wages still due. Reasons for reduction of penalties will be documented and included in Notice of Request for Forfeitures to the Labor Commissioner.

- **Overtime Violation** – Labor Code Section 1813 - \$25 per day per worker. Mandated by statute with no discretion for reduction. Even if certain union agreements allow for employees to work four days of 10 hours each day without overtime, it is the prevailing wage determination which will control in this instance with overtime pay being mandated after 8 hours worked in a day. Labor Code Section 1811.

- **Failure to Provide Certified Payrolls** (including fringe benefit statements, timecards, canceled checks, etc.) within 10 days of Request - Labor Code 1776 (g). The penalty of \$25 per day per worker continues until strict compliance is met (all documents delivered or certified payroll input into the City's LCP tracker).

- **Willful and/or Repeat Offenders** will be subject to maximum penalties as stated above and a recommendation of debarment will be made to the DIR.

- **Liquidated Damages** – If prevailing wages remain unpaid 60 days after a Notice to Withhold is issued to the contractor, the contractor shall be assessed liquidated damages equal to the amount of any unpaid wages. The City shall hold appropriate funds at the conclusion of the project to cover all wages due, penalties and liquidated damages.

- **Apprenticeship Violation** - Labor Code Section 1777.7 \$100 - \$300 per calendar day of noncompliance and debarment up to 3 years. This may include failure to pay training contributions, employ apprentices at the ratio required, etc. The City does not have the authority to impose penalties for Apprenticeship Violations, but instead will file a Public Works Complaint detailing the violation and submitting relevant documentation of the violations to the DAS.

- **Unlicensed Contractor** – Labor Code Section 1021. Any contractor working without a valid contractor license shall be subject to a penalty of \$200 per day per worker. This is

not a penalty that LCPs enforce. Rather, the City will file a complaint with the DIR, as well as with the Contractors State License Board (CSLB).

SECTION XI -NOTIFICATION OF CONTRACTOR AND APPEAL RIGHTS OF PROGRAM ENFORCEMENT ACTION

Notice of Withholding of Contract Payments

After determination of the amount of forfeiture by the Labor Commissioner, the City shall provide notice of withholding of contract payments to the contractor and subcontractor, if applicable. The notice shall be in writing and shall describe the nature of the violation and the amount of wages, penalties, and forfeitures withheld. Service of the notice shall be completed pursuant to Section 1013 of the Code of Civil Procedure by first-class and certified mail to the contractor and subcontractor, if applicable. Notice to Contractor shall be deemed notice to its performance bond surety. The notice shall advise the contractor and subcontractor, if applicable, of the procedure for obtaining review of the withholding of contract payments. The awarding body shall also serve a copy of the notice by certified mail to any bonding company issuing a bond that secures the payment of wages covered by the notice and to any surety on such bond, if their identities are known to the awarding body.

SECTION XII--FEDERALLY FUNDED/ASSISTED CONSTRUCTION PROJECTS

Projects receiving full or partial federal funds are subject to the regulations listed below, in addition to any and all applicable California Labor requirements.

I. DAVIS-BACON REGULATIONS

The U.S. Department of Labor (DOL) has published rules and instructions concerning Davis-Bacon and other labor laws in the Code of Federal Regulations (CFR) and can be found in Title 29 CFR Parts 1, 3, 5, 6 and 7. Part 1 explains how the DOL establishes and publishes Davis-Bacon Act wage determinations and provides instructions on how to use the determinations. Part 3 describes the Copeland Act requirements for payroll deductions and the submission of weekly certified payroll reports. Part 5 covers the labor standards provisions that are in each contract relating to Davis-Bacon Act wage rates and the responsibilities of contractors and contracting agencies to administer and enforce the provisions. Part 6 provides for administrative proceedings enforcing Federal labor standards on construction and service contracts. Part 7 sets parameters for due process procedures before the Wage Appeals Board (renamed Administrative Review Board). These regulations are used as the basis for administering and enforcing the laws.

The Davis-Bacon Act

The Davis-Bacon Act requires the payment of prevailing wage rates (which are determined by the DOL) to all laborers and mechanics on Federal construction projects in excess of \$2,000. Construction includes alteration and/or repair, including painting and decorating, of public buildings or public works.

The Contract Work Hours and Safety Standards Act (CWHSSA)

CWHSSA requires time and one-half pay for overtime (O/T) hours (over 40 hours in any work week) worked on the covered project. The CWHSSA applies to both direct Federal contracts and to indirect Federally-assisted contracts *except* where the assistance is solely in the nature of a loan guarantee or insurance. CWHSSA violations carry a liquidated damages penalty (\$10/day per violation). Intentional violations of CWHSSA standards are considered a Federal criminal misdemeanor.

The Copeland Act (Anti-Kickback Act)

The Copeland Act makes it a crime for anyone to require any laborer or mechanic (employed on a Federal or Federally-assisted project) to *kickback* any part of their wages. The Copeland Act also requires every employer (contractors and subcontractors) to submit weekly certified payroll reports (CPRs).

The Fair Labor Standards Act (FLSA)

The FLSA contains Federal minimum wage rates and overtime (O/T) requirements. These requirements generally apply to any labor performed and may be *pre-empted* by other Federal standards such as the Davis-Bacon Act prevailing wage requirements and CWHSSA O/T provisions. Only the Department of labor has the authority to administer and enforce the FLSA. The Department of Contracting & Purchasing (DCP) will refer any possible FLSA violations that are found on projects to the DOL.

IL CONSTRUCTION CONTRACT PROVISIONS

Each contract subject to Federal (Davis-Bacon) labor standards requirements must contain contract provisions containing labor standards clauses and a Davis-Bacon Wage Decision. These documents are bound into the contract specifications.

The Labor Standards Clauses

The labor standards clauses describe the responsibilities of the contractor concerning Davis-Bacon wages and obligate the contractor to comply with the labor requirements. The labor standards clauses also provide for remedies in the event of violations, including withholding from payments due to the contractor to ensure the payment of wages or liquidated damages which may be found due. These contract clauses enable the contract administrator to enforce the Federal labor standards applicable to the project.

Davis-Bacon Wage Decisions

The Davis-Bacon Wage Decision is a listing of various construction work classifications such as Carpenter, Plumber, and Electrician, and the minimum wage rates (and fringe benefits, where prevailing) that employees performing work in those classifications must be paid.

SECTION XIII - ANNUAL REPORTS

Annual Report on the Labor Compliance Program to the Director of the Department of Industrial Relations.

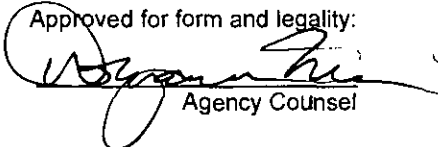
DCP will prepare and submit to the Director of the Department of Industrial Relations an annual report (form LCP-AR1 available at http://www.dir.ca.gov/lcp/LCP-ARI-AB_limited.doc) on the operation of its Labor Compliance Program, within 60 days after the end of its fiscal year.

For further information regarding the LCP program questions may be directed to the Department of Contracting & Purchasing at (510) 238-3970 or addressed to the following:

City of Oakland
Department of Contracting & Purchasing
Social Equity Division
250 Frank Ogawa Plaza # 3341
Oakland, CA 94612

FILED
OFFICE OF THE CITY CLERK
OAKLAND

Approved for form and legality:


Agency Counsel

2011 FEB 24 PM 5:44

REDEVELOPMENT AGENCY
OF THE CITY OF OAKLAND

Resolution No. _____ C.M.S.

**RESOLUTION APPROVING THE STATE LABOR COMPLIANCE
PROGRAM (LCP) FOR THE OAKLAND REDVELOPMENT AGENCY**

WHEREAS, the Oakland Redevelopment Agency is a body awarding contracts for public works of improvement; and

WHEREAS, the Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006 (Proposition 84) require recipient awarding agencies to implement and enforce a Labor Compliance Program in accordance with Subdivision (b) of Labor Section 1771.5 for all public improvement projects using funds derived from Proposition 84; and

WHEREAS, the Agency Board wishes to implement and enforce a Labor Compliance Program (LCP) approved by the California Department of Industrial Relations (DIR); and

WHEREAS, all findings and conclusions made by the Agency Board pursuant to this Resolution are based upon all of the oral and written evidence presented to it and taken as a whole, and not based solely on the information provided in this Resolution; and

WHEREAS, prior to taking action, the Agency Board has reviewed and considered all of the information and data relating to the Labor Compliance Program proposed by staff, set forth in the attachment hereto labeled Attachment 2; now, therefore be it

RESOLVED: That the Agency Board finds that the Labor Compliance Program attached hereto and incorporated herein labeled Attachment 2 is consistent with the requirements of Proposition 84 and requirements of Subdivision (b) of Labor Section 1771.5 for a labor compliance program; and be it

FURTHER RESOLVED: That the City Council authorizes the Agency Administrator, or his designee, to submit said labor Compliance Program to the State of California Department of Industrial Relations (DIR) for approval; and be it

FURTHER RESOLVED: That the Agency Board directs the Agency Administrator to implement said Labor Compliance Program approved hereunder on all contracts for public works of improvement of \$1,000 or more.

IN AGENCY, OAKLAND, CALIFORNIA, _____

PASSED BY THE FOLLOWING VOTE:

AYES - BRUNNER, KERNIGHAN, NADEL, SCHAAF, DE LA FUENTE, BROOKS, KAPLAN, AND
CHAIRPERSON REID

NOES -

ABSENT -

ABSTENTION -

ATTEST:

LATONDA SIMMONS
Secretary of the Redevelopment Agency
of the City of Oakland, California

**CITY OF OAKLAND
DEPARTMENT OF CONTRACTING
AND PURCHASING
LABOR COMPLIANCE PROGRAM**



1852 2002

OAKLAND

Growing for Over 150 Years

**Prepared by the City of Oakland
JANUARY 2011**

City of Oakland Labor Compliance Program Manual

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CITY OF OAKLAND DEPARTMENT OF CONTRACTING & PURCHASING LABOR COMPLIANCE PROGRAM

INTRODUCTION

The City of Oakland's Department of Contracting & Purchasing, Social Equity Division is responsible for educating, assisting, monitoring and enforcing prevailing wage requirements and applicable labor laws to ensure that all contractors working on City projects are in compliance with State (California Labor Code Chapter 1 of Part 7 of Division 2) and Federal (Code of Federal Regulations 29) prevailing wage statues and regulations.

This program is applicable to all public works projects awarded by the City of Oakland on or after August 1, 2010. California Labor Code Section 1770, et seq., require contractors on public works projects pay their workers based on the prevailing wage rates which are established and issued by the Department of Industrial Relations, Division of Labor Statistics and Research.

SECTION I—Labor Compliance Program Requirements

a.) The City of Oakland's Labor Compliance Program (LCP) is certified under California Code of Regulations Chapter 8, Section 16425. The City of Oakland, Department of Contracting & Purchasing received initial certification on _____. In establishing the LCP, the City adheres to the statutory requirements as stated in California's labor Code Section 1771.5.

b) Pursuant to California Labor Code Section 1771.5, Oakland City Council and Redevelopment Agency Resolution Nos. 57103 C.M.S. and 87-4 respectively, the City of Oakland requires the payment of the general prevailing wage rate of per diem wages and

the general prevailing rate of per diem wages for holiday and overtime work on City projects.

c) California Labor Code Section 1776 requires contractors to keep accurate payroll records of trades workers on all public works projects and to submit copies of certified payroll records upon request.

d) California Labor Code Section 1777.5 requires contractors to employ registered apprentices on public works projects.

This ***Labor Compliance Program*** contains the labor compliance standards required by state and federal laws, regulations, and directives, as well as City policies and contract provisions, which include, but are not limited, to the following:

1. Payment of applicable general prevailing wage rates.
2. Employment of properly registered apprentices.
3. Providing certified payroll records upon request.
4. Monitoring City construction sites for the verification of proper payments of prevailing wage rates and work classification.
5. Conducting pre-bid meetings with contractors/subcontractors.
6. Withholding contract payments and imposing penalties for noncompliance.
7. Provide applicable reports to the California Labor Commissioner
8. Preparation and submittal of an Annual Report to the Department of Industrial Relations.

The City is committed to providing a current, complete and accurate LCP program for all applicable projects. As such, the City will update its administrative manual and LCP documents each time the Labor Code is amended and /or the DIR issues new regulations relating to LCPs. The City will also conduct periodic training of its LCP staff when the Labor Code and DIR regulations relating to LCP change and/or as needed.

SECTION 1. PUBLIC WORKS SUBJECT TO PREVAILING WAGE LAWS

State prevailing wage rates as set forth in Labor Code Sections 1720, 1720.2, 1720.3, and 1771, have been made applicable to City construction contracts and include, but are not limited to, such types of work as construction, alteration, demolition, repair, installation or maintenance work. The Division of Labor Statistics and Research (DLSR) predetermines the appropriate prevailing wage rates for particular construction trades and crafts by county.

Types of Contracts to Which Labor Compliance Program Requirements Apply
As provided in Labor Code Section 1771.3(a) (2) and (b), 1771.5(c) and California Code of Regulations Section 16450 et seq., an awarding body Labor Compliance Program (LCP), shall apply to 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.

SECTION II. – EMPLOYMENT OF MINORS PROHIBITED

The employment of minors, under 16 years of age, is strictly prohibited in all building and construction work of any kind per California Code of Regulations Title 8, Chapter 6, Subsection 1, Article 1 § 11701(b)

SECTION III. – YOUTH EMPLOYMENT PROGRAMS

Regardless of age or status in a youth employment program, any workers employed on Public Works projects are subject to the payment of prevailing wages.

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The City requires the contractor and all subcontractors to make weekly wage payments to all workers employed on the project. Payments shall be made by means of a check, money order or cashier's check. Cash payments are prohibited.

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The City publicly advertises upcoming public works projects to be awarded according to a competitive bidding process. Further information regarding the requirements of the City's bidding process may be obtained by accessing the Department of Contracting & Purchasing website at <http://cces.oaklandnet.com/ContComp/> Any additional questions may be addressed to the Department of Contracting & Purchasing, Social Equity Division, 250 Frank Ogawa Plaza, Suite 3341., Oakland CA 94612.

All City bid advertisements (or bid invitations) and public works contracts requiring LCP compliance shall contain appropriate language concerning the requirements of the Public Works chapter of the Labor Code similar to the sample language listed below:

This project is subject to the requirements of Section 1770 et seq. of the California Labor Code requiring the payment of prevailing wages, the training of apprentices and compliance with other applicable requirements. The City shall provide upon request copies of the prevailing rate of per diem wages to be paid to all applicable workers. The City shall make available prevailing wage rate determinations to all interested parties upon reasonable request during normal business hours. Additionally, the contractor shall have a copy of the prevailing wage determinations posted in a conspicuous place at each job site.

Prevailing wage information may also be obtained via the internet at: www.dir.ca.gov. The City has instituted a Labor Compliance Program (LCP) and all contractors who perform work on projects covered by the LCP with this awarding body will be subject to the terms of that LCP.

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SECTION VI - POST AWARD MEETING

After the City awards the public works contract, and prior to the commencement of the work, a Post Award meeting shall be conducted with the contractor and subcontractors for the particular project. The general contractor is responsible to see that the information provided at the meeting, relating to Labor Compliance Program (LCP) requirements, is distributed to its subcontractors.

SECTION VII - REVIEW OF CERTIFIED PAYROLL RECORDS

Certified Payroll Records Required

The contractor and each subcontractor shall maintain payrolls and basic records (timecards, canceled checks, cash receipts, trust fund forms, accounting ledgers, tax forms, superintendent and foreman daily logs, etc.) during the course of the work and shall preserve them for a period of three (3) years thereafter for all trades workers working at the City's project sites. Such records shall include the name, address, and social security number of each worker, his or her classification, a general description of the work each employee performed each day, the rate of pay (including rates of contributions for, or costs assumed to provide fringe benefits), daily and weekly number of hours worked, deductions made, and actual wages paid.

Electronic Payroll Submittals.

The Contractor shall register for and use the City's selected electronic certified payroll tracking system— LCPTracker, a Labor Compliance software program. This software is a web-based system accessible provided by an independent company on the World Wide Web. The website address (http://www.fminternational.com/labor_compliance.htm) may be accessed for general information and an introductory product tour.

Full Accountability

Each individual, laborer or craftsperson working on a public works contract must appear on the payroll. The basic concept is that the employer who pays the trades worker must report that individual on its payroll. This includes individuals working as apprentices in

an apprenticeable trade. Owner-operators are to be reported by the contractor employing them; rental equipment operators are to be reported by the rental company paying the workers' wages.

Sole owners and partners who work on a contract must also submit a certified payroll record listing the days and hours worked, and the trade classification descriptive of the work actually done. The contractor shall make the records required under this section available for inspection by an authorized representative of the City and the Department of Industrial Relations, and shall permit such representatives to interview trades workers during working hours on the project site.

Responsibility for Subcontractors

The contractor shall be responsible for ensuring adherence to labor standards provisions by its subcontractors in the manner specified by Labor Code Section 1775. Moreover, the contractor is responsible for Labor Code violations by its subcontractors of which it has knowledge.

Payment to Employees

Employees must be paid unconditionally, the full amounts which are due and payable for the period covered by the particular payday. An employer must, therefore, establish a fixed workweek (i.e., Sunday through Saturday). On each and every payday, each worker must be paid all sums due and must be provided with an itemized wage statement.

If an individual is called a subcontractor, when, in fact, he/she is merely a journey level mechanic supplying only his/her labor, such an individual would not be deemed a bona fide subcontractor and must be reported on the payroll of the contractor who contracted for his or her services as a trades worker. Moreover, any person who does not hold a valid contractor's license cannot be a subcontractor, and anyone hired by that person is the worker or employee of the contractor who contracted for his or her services for purposes of workers' compensation laws.

A worker's rate for straight time hours must equal or exceed the rate specified in the contract by reference to the Prevailing Wage Rate Determinations for the class of work actually performed. Any work performed on Saturday, Sunday, and/or a holiday, or a portion thereof, must be paid the prevailing rate established for those days regardless of the fixed workweek. The hourly rate for hours worked in excess of 8 hours in a day or 40 hours in a workweek shall be premium (overtime) pay. All work performed in excess of eight hours per day, 40 hours per week, on Saturday, on Sunday, and on holidays shall be paid in accordance with the applicable Prevailing Wage Determination. Additionally, appropriate shift pay and applicable travel and subsistence pay is also required.

Maintaining Records:

The City shall maintain all records relating to any project subject to Labor Compliance for a period of three (3) years from the date of the filing of the Notice of Completion of the Project. In the event no Notice of Completion is filed, the City shall

maintain all LCP records relating to a specific project for three (3) years from the date of actual completion or beneficial occupancy, whichever is later.

Apprentices

Contractors shall comply with the requirements of the apprenticeship provisions of California Labor Code Section 1777.5.

Apprentices shall be permitted to work as such only when they are registered, Individually, under a bona fide apprenticeship program registered and approved by the State Division of Apprenticeship Standards. The allowable ratio of apprentices to journeypersons in any craft/classification shall not be greater than the ratio permitted to the contractor as to its entire workforce under the registered program. Any worker listed on a payroll at an apprentice wage rate who is not registered shall be paid the journey level wage rate determined by the Department of Industrial Relations for the classification of the work he/she actually performed.

The contractor shall furnish written evidence of the registration (i.e., Apprenticeship Agreement or Statement of Registration) of its training program and apprentices, as well as the ratios allowed and the wage rates required to be paid thereunder for the area of construction, prior to using any apprentices in the contract work.

Pre-apprentice trainees, trainees in non-apprenticeable crafts, and others who are not duly registered will not be permitted on public works projects unless they are paid full prevailing wage rates as journey-persons. Compliance with California Labor Code Section 1777.5 requires all public works contractors and subcontractors to:

1. Register the prevailing wage project (DAS-140 available at <http://www.dir.ca.gov/DAS/DASForm140.pdf>);
2. Request to Train apprentices on public works projects in a ratio to journeypersons as stipulated in the Apprenticeship Standards under which each Joint Apprenticeship Committee operates, but in no case shall the ratio be less than one (1) apprentice hour to each five (5) journeypersons hours worked on the project. (DAS-142 or equivalent documentation or the actual employment of apprentices).
3. Contribute to the training fund in the amount identified in the prevailing wage rate publication for journeypersons and apprentices. Where the trust fund administrators cannot accept the contributions, then payment shall be made to the California Apprenticeship Council, Post Office Box 420603, San Francisco, CA 94142; and
4. It should be noted that a prior approval for a separate project does not confirm approval to train on any other project. The contractor/subcontractor must check with the applicable Apprenticeship Committee to verify status.

b.) The Contract Work Hours and Safety Standards Act (CWHSSA) requires time and one-half pay for overtime as defined by the Federal government. In the event that this project is federally funded, an additional penalty of \$10/day per violation will be strictly enforced for under-payment of the overtime rate. Intentional violations of CWHSSA standards are considered a Federal criminal misdemeanor.

c.) California Labor Code Section 1778 makes it a felony for anyone to require any laborer or mechanic employed on a public works project to *kickback* any portion of their wages. The Copeland (Anti-Kickback) Act is the federal statute that makes it a felony to require any laborer or mechanic employed on a Federal or Federally Assisted public works project to return any portion of his/her wages in connection with services rendered upon any public work.

Payroll Review and Audits

Payroll review and audits shall be conducted by the Department of Contracting & Purchasing (or their trained designee), and may also be conducted at the request of the Labor Commissioner to determine whether all trades workers on project sites have been paid according to the prevailing wage rates.

The City's preference and recommended practice is to review all certified payroll for all employees for all weeks of work on a project at least once a month. However, the CCO shall review the certified payrolls not less than once a month. The CCO shall review payrolls for at least one full week of payroll for each contractor or subcontractor performing work on the applicable project for each month in which work was performed on the project.

DAS 140 - Register to Train – The City will look to receive a DAS-140 from each contractor for each apprenticeable craft employed on the project. The original DAS-140 should be sent within ten days of each contractor/subcontractor starting work on the project. A copy of DAS 140 forms should be turned in with each contractor's and subcontractor's first certified payroll. If the form is not completed correctly or is not submitted, the contractor/subcontractor will be notified of this deficiency and asked to take corrective action by completing and filing a correct DAS-140 form.

DAS 142 - Request apprentices - The City will look for either apprentices being employed on the project (through examination of certified payrolls) or look to receive a DAS-142 (or its equivalent) from the contractor/subcontractor for each apprenticeable trade employed on the project and confirmation that the DAS-142 form was sent to an appropriate apprenticeship committee. A contractor is NOT REQUIRED to use the DAS-142 form, but can document its request for apprentices by other means. However, if a contractor does use the 142 form (filling it out properly and filing it promptly), with a delivery receipt, the contractor is "legally presumed" to be in compliance.

Employ Apprentices in 1:5 ratio – To the extent that apprentices are available for employment, the Labor Code mandates that apprentices are employed in a 1:5

ratio. This means an average (calculated at the end of the project) of one apprentice hour for every 5 journeymen hours. Some approved Apprenticeship Standards recognize a different ratio and those other ratios may be used so long as the apprenticeship committee has DAS approval.

Pay correct apprenticeship rates - Apprenticeship wage rates will also be checked by the City against the applicable prevailing wage determination.

Pay correct training contribution (CAC 2) - The City will review and confirm that the training contributions set forth in the prevailing wage determination are paid to either an approved apprenticeship committee or to the California Apprenticeship Council. (CAC-2 contributions to be confirmed through DIR website.)

SECTION VIII ONSITE JOB VISITS AND WORKER INTERVIEWS

DCP monitors labor standards compliance by conducting interviews with construction workers at the job site and reviewing payroll reports and initiates and oversees any enforcement actions that may be required.

SECTION IX – ENFORCEMENT

Duty of the Awarding Body

The City of Oakland, as the awarding body having an LCP, has a duty to enforce the Labor Code public works requirements (Chapter 1 of part 7 of Division 2 and Division 3 of the Labor Code).

SECTION X - PROJECT CLOSE-OUT- FORFEITURES AND PENALTIES

In accordance with Labor Code Section 1727, the City may withhold, from any monies payable on account of work performed by the Contractor or subcontractor, such sums as may administratively be determined to be necessary to satisfy any liabilities of the Contractor or its subcontractor for unpaid wages and liquidated damages as specified in this Section. In the event of failure to pay any laborer or mechanic, including any apprentices, employed or working on the site of the work, all or part of wages required by the contract, the city may, after written notice to the contractor (Notice of Withholding Contract Payments), take such action as may be necessary to cause the suspension of further payment, advance or guarantee of funds until such violations have ceased. Once the project has been completed, the City shall:

If ANY WAGE VIOLATION HAS OCCURRED during the course of the project, then the City will assess penalties as follows:

- **Wage Violation** – Labor Code 1775 - \$50 per day per worker per violation. The City now has discretion to reduce or waive penalties. Reductions or waivers will only be made if the contractor meets the requirements of Labor Code Section 1775,

subparagraph (b) i.e. good faith or inadvertent error, prompt correction and no additional violations. No reduction should be made if there are outstanding wages still due. Reasons for reduction of penalties will be documented and included in Notice of Request for Forfeitures to the Labor Commissioner.

- **Overtime Violation** – Labor Code Section 1813 - \$25 per day per worker. Mandated by statute with no discretion for reduction. Even if certain union agreements allow for employees to work four days of 10 hours each day without overtime, it is the prevailing wage determination which will control in this instance with overtime pay being mandated after 8 hours worked in a day. Labor Code Section 1811.

- **Failure to Provide Certified Payrolls** (including fringe benefit statements, timecards, canceled checks, etc.) within 10 days of Request - Labor Code 1776 (g). The penalty of \$25 per day per worker continues until strict compliance is met (all documents delivered or certified payroll input into the City's LCP tracker).

- **Willful and/or Repeat Offenders** will be subject to maximum penalties as stated above and a recommendation of debarment will be made to the DIR.

- **Liquidated Damages** – If prevailing wages remain unpaid 60 days after a Notice to Withhold is issued to the contractor, the contractor shall be assessed liquidated damages equal to the amount of any unpaid wages. The City shall hold appropriate funds at the conclusion of the project to cover all wages due, penalties and liquidated damages.

- **Apprenticeship Violation** - Labor Code Section 1777.7 \$100 - \$300 per calendar day of noncompliance and debarment up to 3 years. This may include failure to pay training contributions, employ apprentices at the ratio required, etc. The City does not have the authority to impose penalties for Apprenticeship Violations, but instead will file a Public Works Complaint detailing the violation and submitting relevant documentation of the violations to the DAS.

- **Unlicensed Contractor** – Labor Code Section 1021. Any contractor working without a valid contractor license shall be subject to a penalty of \$200 per day per worker. This is

not a penalty that LCPs enforce. Rather, the City will file a complaint with the DIR, as well as with the Contractors State License Board (CSLB).

SECTION XI -NOTIFICATION OF CONTRACTOR AND APPEAL RIGHTS OF PROGRAM ENFORCEMENT ACTION

Notice of Withholding of Contract Payments

After determination of the amount of forfeiture by the Labor Commissioner, the City shall provide notice of withholding of contract payments to the contractor and subcontractor, if applicable. The notice shall be in writing and shall describe the nature of the violation and the amount of wages, penalties, and forfeitures withheld. Service of the notice shall be completed pursuant to Section 1013 of the Code of Civil Procedure by first-class and certified mail to the contractor and subcontractor, if applicable. Notice to Contractor shall be deemed notice to its performance bond surety. The notice shall advise the contractor and subcontractor, if applicable, of the procedure for obtaining review of the withholding of contract payments. The awarding body shall also serve a copy of the notice by certified mail to any bonding company issuing a bond that secures the payment of wages covered by the notice and to any surety on such bond, if their identities are known to the awarding body.

SECTION XII--FEDERALLY FUNDED/ASSISTED CONSTRUCTION PROJECTS

Projects receiving full or partial federal funds are subject to the regulations listed below, in addition to any and all applicable California Labor requirements.

I. DAVIS-BACON REGULATIONS

The U.S. Department of Labor (DOL) has published rules and instructions concerning Davis-Bacon and other labor laws in the Code of Federal Regulations (CFR) and can be found in Title 29 CFR Parts 1, 3, 5, 6 and 7. Part 1 explains how the DOL establishes and publishes Davis-Bacon Act wage determinations and provides instructions on how to use the determinations. Part 3 describes the Copeland Act requirements for payroll deductions and the submission of weekly certified payroll reports. Part 5 covers the labor standards provisions that are in each contract relating to Davis-Bacon Act wage rates and the responsibilities of contractors and contracting agencies to administer and enforce the provisions. Part 6 provides for administrative proceedings enforcing Federal labor standards on construction and service contracts. Part 7 sets parameters for due process procedures before the Wage Appeals Board (renamed Administrative Review Board). These regulations are used as the basis for administering and enforcing the laws.

The Davis-Bacon Act

The Davis-Bacon Act requires the payment of prevailing wage rates (which are determined by the DOL) to all laborers and mechanics on Federal construction projects in excess of \$2,000. Construction includes alteration and/or repair, including painting and decorating, of public buildings or public works.

The Contract Work Hours and Safety Standards Act (CWHSSA)

CWHSSA requires time and one-half pay for overtime (O/T) hours (over 40 hours in any work week) worked on the covered project. The CWHSSA applies to both direct Federal contracts and to indirect Federally-assisted contracts *except* where the assistance is solely in the nature of a loan guarantee or insurance. CWHSSA violations carry a liquidated damages penalty (\$10/day per violation). Intentional violations of CWHSSA standards are considered a Federal criminal misdemeanor.

The Copeland Act (Anti-Kickback Act)

The Copeland Act makes it a crime for anyone to require any laborer or mechanic (employed on a Federal or Federally-assisted project) to *kickback* any part of their wages. The Copeland Act also requires every employer (contractors and subcontractors) to submit weekly certified payroll reports (CPRs).

The Fair Labor Standards Act (FLSA)

The FLSA contains Federal minimum wage rates and overtime (O/T) requirements. These requirements generally apply to any labor performed and may be *pre-empted* by other Federal standards such as the Davis-Bacon Act prevailing wage requirements and CWHSSA O/T provisions. Only the Department of labor has the authority to administer and enforce the FLSA. The Department of Contracting & Purchasing (DCP) will refer any possible FLSA violations that are found on projects to the DOL.

II. CONSTRUCTION CONTRACT PROVISIONS

Each contract subject to Federal (Davis-Bacon) labor standards requirements must contain contract provisions containing labor standards clauses and a Davis-Bacon Wage Decision. These documents are bound into the contract specifications.

The Labor Standards Clauses

The labor standards clauses describe the responsibilities of the contractor concerning Davis-Bacon wages and obligate the contractor to comply with the labor requirements. The labor standards clauses also provide for remedies in the event of violations, including withholding from payments due to the contractor to ensure the payment of wages or liquidated damages which may be found due. These contract clauses enable the contract administrator to enforce the Federal labor standards applicable to the project.

Davis-Bacon Wage Decisions

The Davis-Bacon Wage Decision is a listing of various construction work classifications such as Carpenter, Plumber, and Electrician, and the minimum wage rates (and fringe benefits, where prevailing) that employees performing work in those classifications must be paid.

SECTION XIII - ANNUAL REPORTS

Annual Report on the Labor Compliance Program to the Director of the Department of Industrial Relations.

DCP will prepare and submit to the Director of the Department of Industrial Relations an annual report (form LCP-ARI available at http://www.djr.ca.gov/lcp/LCP-ARI-AB_limited.doc) on the operation of its Labor Compliance Program, within 60 days after the end of its fiscal year.

For further information regarding the LCP program questions may be directed to the Department of Contracting & Purchasing at (510) 238-3970 or addressed to the following:

City of Oakland
Department of Contracting & Purchasing
Social Equity Division
250 Frank Ogawa Plaza # 3341
Oakland, CA 94612