

The Labor Compliance Managers

Introduction

The California Labor Code requires that workers employed by contractors or subcontractors in the execution of public work contracts be paid the State-determined prevailing wage. While the Division of Labor Standards Enforcement (DLSE), a part of the California Department of Industrial Relations (DIR), remains the agency primarily responsible for the enforcement of prevailing wage laws “in a manner consistent with the practice of DLSE (8 CCR 16434),” the Legislature has provided a statutory mechanism since 1989 that permits political subdivisions of the state which award public works contracts (awarding bodies) to initiate and enforce their own labor compliance programs (LCPs) in conjunction with the DIR and the DLSE. This is also the case for school districts. Rather than tasking themselves with the burden of implementing, funding, and managing a permanent LCP, however, many school districts choose to outsource this responsibility to certified third party LCPs to meet Prop 47 funding obligations designated for Kindergarten-University Public Education Facilities construction projects, on a case by case basis.

The Labor Compliance Managers provide third party LCP and consulting services to school districts, local municipalities, housing authorities, redevelopment agencies, developers, contractors, and all other parties initiating or managing construction projects that are subject to State regulated, or Davis-Bacon, prevailing wage requirements. We do everything from documenting prevailing wage language during bid and contract preparation; educating contractors and subcontractors about their labor compliance responsibilities during pre-bid and pre-construction conferences; conducting on-site labor compliance inspections; communicating in English and Spanish with construction personnel as needed; auditing certified payroll records, correcting prevailing wage errors that are found, and facilitating project completion on time and on budget.

Please review the attached description of how our third party LCP program works. Again, it is designed to enforce prevailing wage requirements consistent with the practice of DLSE. If some of the information, however, needs further clarification, you are invited to email us at RLinDaly@aol.com to answer any questions about the content, or share how we can best serve you at this time.

The Labor Compliance Managers

Section 1771.7 of the California Labor Code requires that all LCPs, including The Labor Compliance Managers, fulfill the following requirements on school district construction projects:

1. All bid invitations and public works contracts issued by the district shall contain appropriate language about the requirements of the public works chapter of the California Labor Code, comprised of labor code sections 1720-1861.
2. A pre-job conference shall be conducted with the contractor or subcontractors to discuss federal and state labor law requirements applicable to the contract.
3. Project contractors and subcontractors shall maintain and furnish to the LCP, at a designated time, a certified copy of each weekly payroll with a statement of compliance signed under penalty of perjury.
4. The LCP shall review and, if appropriate, audit payroll records to verify compliance with the public works chapter of the labor code.
5. The LCP shall require the district to withhold contract payments when payroll records are delinquent or inadequate.
6. The LCP shall require the district to withhold contract payments equal to the amount of underpayment and applicable penalties when the LCP establishes that underpayment occurred through an investigation.

Benefits of using The Labor Compliance Managers, a third-party labor compliance program

A comprehensive labor compliance program may result in the following:

Competitive bidding process integrity

When a comprehensive labor compliance program (LCP) is initiated and enforced, it prevents underbidding by contractors, or contractors who utilize subcontractors and who do not pay prevailing wages. Awarding bodies benefit from receiving a higher number of qualified bidders.

Regeneration of funds to the community

Ensuring that prevailing wage is paid to the workers employed on the project benefits the entire community by the regeneration of project funds back to the community.

Better labor relations

A strong labor compliance program is a sound approach to the promotion of responsible working conditions. Cooperation and communication among all constituencies interested in school construction offer the best long-term prospects for a sustained, positive labor and management relationship.

Successful contracts

Under an LCP, awarding bodies audit and enforce their contracts with contractors and subcontractors. This enables better scrutiny of construction projects, which helps to ensure the terms of the contract coincide with the awarding bodies' specifications.

Ability to hold penalties and contract payment

For a DIR-certified LCP, an awarding body may withhold contract payments for certain violations of the labor code and collect penalties against a contractor when it is established through an investigation that there has been an underpayment of wages. The awarding body also may withhold contract payments when payroll records are delinquent or inadequate.

Who does the law protect?

- A. All workers employed on public works (labor code section 1771), including employees, independent contractors, partners, sole proprietors, and owner-operators.
- B. Public workers defined
 - 1. Labor code sections 1720-1720.3
 - 2. Precedential public works decisions
- C. Limited exemptions
 - 1. Work carried out by a public agency “with its own forces” (labor code section 1771)
 - 2. Certain janitorial services/guards (8 CCR 16000)

What must public works contractors do to comply with the law?

- A. Maintain and furnish records (labor code section 1776),
- B. Pay the prevailing rate to all workers (labor code sections 1771, 1774, and 1813),
- C. Comply with apprenticeship requirements (labor code section 1777.5).

What is the prevailing wage rate?

- A. Published prevailing wage determinations by the DLSR,
- B. Process by which prevailing wage rates are established (labor code sections 1773.1 and 1773.9; 8 CCR 16200-16300)

How will The Labor Compliance Managers enforce the law?

- A. Conduct investigations
 - 1. Monitor certified payroll records (CPRs), investigate complaints from workers, monitor agencies and contractors,
 - 2. Prepare audits and findings
- B. Obtain approval of recommended forfeitures from labor commissioner (8 CCR 16436-16437),
- C. Issue and serve Notice of Withholding of Contract Payments (NWCPs) (labor code section 1771.6),
- D. Defend NWCPs in administrative review proceedings and in court (labor code sections 1742-1743),
- E. Collect and disburse wages and penalties (labor code section 1743).

Note: All of the citations to the labor code sections and the California Code of Regulations (CCR) noted above are available by accessing the California Department of Industrial Relations home page (www.dir.ca.gov) and links to that page.

Nearly all contractors and subcontractors will request at least a settlement meeting, and will likely request formal review once an NWCP has been served upon them. If there is no request for formal review, the assessment becomes a final order and the withheld funds can be disbursed.

A Notice of Transmittal must be completed and timely mailed by the LCP to the Department of Industrial Relations at the address indicated. Under the NWCP administrative review process in the labor code, once the contractor or subcontractor has requested review of the NWCP, it is the task of the DIR to provide the contractor a hearing with a presiding hearing officer. Consequently, the Notice of Transmittal is the tool utilized by the LCP to notify the DIR of its statutory obligation to begin the administrative review process and provide the contractor requesting review a hearing.

A Notice of Opportunity to Review Evidence must also be completed and mailed Pursuant to Labor Code Section 1742(b) to satisfy the LCP's statutory obligation to let the contractor and subcontractor know the materials contained in the LCP's investigative file which supports the LCP's assessment.

LCP requirements prior to construction

Advertisement for bid/construction contract

The call for bids and the contract or purchase order must contain language appropriate to the requirements of prevailing wage law as contained in labor code sections 1771, 1775, 1777.5, 1813 and 1815. The first advertisement date of the project determines the applicable prevailing wages.

Pre-construction conference

This meeting is to be held by the district before commencement of the work for contractors and subcontractors with accepted bids. The district representative at the meeting must be prepared to discuss and answer questions about requirements and procedures, including record keeping, wage determinations, apprenticeship requirements and required form filing. Information on paying training fees and giving notice to use registered apprentices should also be given out at the pre-construction meeting. Labor code sections 1777.5 and 1777.6 contain the instructions for hiring apprentices and the ratios to journey persons. A checklist showing which federal and state labor law requirements were discussed shall be kept for each conference.

Payroll records

Certified payroll records must be kept by the contractor in accordance with labor code section 1776 and furnished to the awarding body at times designated in the contract or within 10 days of request by the awarding body, or designated third-party LCP representing the awarding body.

Review

Orderly review of payroll records and, if necessary, audits to verify compliance with the statutory requirements shall be conducted and documented.

Withholdings

There will be a prescribed routine for withholding penalties, forfeitures and underpayment of wages for prevailing wage violations.

Delinquency

Contract payments should not be made when payroll records are delinquent or inadequate.

Public works contract award form

The Public Works Contract Award Form (DAS 140) must be filled out by contractors and subcontractors with the appropriate apprenticeship box checked and sent to the appropriate local apprenticeship committee within five days of signing the contract. A copy of this form will be kept in the appropriate project file.

Proof of general liability and workers' compensation insurance

Evidence of required workers compensation insurance should be part of the permanent project file.

Documentation and forms required during construction

Payroll records

Each contractor and subcontractor is required by labor code section 1776 to keep and maintain certified payroll reports.

All certified payroll reports are to be submitted to the district or third party LCP for review during the course of the contract and furnished at times designated in the contract or within 10 days of the request by the awarding body. The certified payroll reporting form (A-1-131) will be obtained from any office of the Department of Industrial Relations' Division of Labor Standards Enforcement (DLSE) or downloaded from the Web site at <http://www.dir.ca.gov/dlse/publicWorksPayrollInstructions.htm>. If the contractor uses his/her own form, it must contain the following information:

- *Employee full name, address and social security number.*
- *Work classification.*
- *Amount paid per hour.* If payments are made to any third party trust, funds or plans for health and welfare, pension or vacation trusts, as part of the employer's prevailing wage obligation, then those payments should be indicated on the payroll report. The basic wage rate paid per hour plus the amounts contributed per hour for benefits, including training fund contributions, must at least equal the total prevailing rate required for that classification.
- *Daily regular, overtime and holiday hours and weekly totals.*
- *Gross/net wages paid for this project/all projects.*
- *Contractor's full name and address.*
- *Project name and location.*
- *Dates of the payroll.*
- *Certification statement or Statement of Compliance* signed by a person with the authority to represent the company. This statement must declare under penalty of perjury that 1) the information contained in the payroll record is true and correct and 2) the employer has complied with the requirements of labor code sections 1771, 1811 and 1815 for any work performed by his or her employees on the public works project.

It is important that each contractor write "*FINAL*" on the last submitted payroll for the project.

The contractor must complete a *Non-Performance Report* for each week in which no work is performed. All days worked on a project must be accounted for, including Saturdays, Sundays and holidays.

Fringe Benefit Statement

The form, Statement of Employer Payments (PW 26), must be completed by each contractor and subcontractor who pays benefits to a third party trust, plan or fund for health and welfare benefits, vacation funds, or makes pension contributions. It must contain the fund or trust name, address, administrator, and amount per hour contributed and frequency of contributions for each classification of worker. Training fund contributions must be reported on this form. A copy of the form can be downloaded from <http://www.dir.ca.gov/dlse/DLSEForm-PW26.pdf>.

Payroll rate verification

The LCP must acquire and review new prevailing wage rates at least twice yearly through the Department of Industrial Relations' Division of Labor Statistics and Research or from the Web site at http://www.dir.ca.gov/DLSR/statistics_research.html. Payrolls should be checked to make sure the new rates are in effect for each trade. New determinations are published in February and again in August. The rates go into effect the day after the expiration date on the determination.

Job site monitoring

Workforce documentation

The district or third-party LCP must keep a daily record of all workers at the job site. Job classifications should be included. The district may also request that the inspector of record (IOR) include this information in the daily report form.

All prime contractors should be required to submit a prime contractors daily superintendent report with workers and their classifications listed on site for the day.

Random onsite inspections

Onsite, random inspections must be conducted on a regular basis to observe, interview workers and check hourly wage and classifications.

Close-out documentation and procedures

Final payroll

The district must verify project payrolls have been submitted by each prime contractor or subcontractor. The final payroll from each must be marked "FINAL" by the contractor.

Final release of funds

Prior to final release of the funds, the third-party LCP for the district and the contract administrator **MUST** verify that all required contractor documentation has been received.

Labor compliance investigation

In addition to monitoring all certified payroll records provided by the contractors, the LCP must investigate worker complaints of underpayment of prevailing wage rates. The major components and tasks related to this responsibility are as follows:

- o Gather supporting documents from all available sources and analyze for authenticity.
- o Conduct a complete certified payroll record (CPR) and/or project audit. Review CPRs for errors, inconsistencies, discrepancies, falsification, misclassification, under-reporting, and any other omissions that render the records inaccurate where needed by comparing the inspector of records daily log with all available records.
- o On an as-needed basis according to the circumstances and issues that may arise:
Calculate back wages and penalties using the proper wage determinations and trade classifications pursuant to the Department of Industrial Relations' Division of Labor Statistics and Research (DLSR) directives and records.
- o Review findings with contractor/subcontractor.

- o Write a complete summary of investigation with a statement of finding and recommended action for submission to the Department of Industrial Relations' Division of Labor Standards Enforcement for approval of withholdings.
- o Conduct settlement negotiations.
- o Testify on behalf of the school district in appeal hearings and in litigation.
- o Attend pre-bid and job-start meetings and monitor active construction projects.
- o Interview workers to validate complaints.

Guidelines for prevailing wages

Labor code section 1771 requires that workers receive the general prevailing rate of per diem wages for work of a similar character in the locality in which the public work is performed, and the general prevailing rate of per diem wages for holiday and overtime work.

Prevailing wage rate determinations

The law requires that workers on a publicly-funded project must be paid the prevailing wage of the area in which the project is located. Prevailing wage rates are established by the director of the Department of Industrial Relations by various methods, and these rates are made available to the district, contractors, workers and the general public by the department's Division of Labor Statistics and Research (DLSR) or on their Web site at http://www.dir.ca.gov/DLSR/statistics_research.html. The rates are published twice each year as prevailing wage determinations. Some trades are issued regionally (northern or southern California) and other subtrades are issued by county in which the project is located.

Each wage determination for each classification of worker will indicate the basic wage rate and fringe benefit amounts which equal the total required wage for each classification of worker for straight time and overtime work.

When assistance is needed with a special or unknown classification, a written request will be submitted to the DLSR for them to make a determination.

The contractor is obligated to pay the full prevailing rate of per diem wages. He/she, however, may take credit for amounts up to the total of fringe benefit amounts listed as prevailing in the determination. The credit may be taken only for amounts which are actual payments as defined under the Employer Payments Section CCR 16000(1)-(3). If the total of employer payments for the fringe benefits listed is less than the aggregate amount in the wage determination, the contractor must pay the difference directly to the employee. No amount of credit for payments over the aggregate amount of employer payments shall be taken as a credit towards the hourly wage required to be paid.

The determinations indicate the amount required for straight-time work, overtime, holiday, and Saturday and Sunday work. There may be special requirements for the payment of overtime and Saturday/Sunday work, and these requirements will be indicated by footnotes. These footnotes should be examined carefully.

There are separate determinations issued for apprentices on public works. These footnotes should also be examined carefully.

Each wage determination will indicate when the determination will expire and whether the rate will increase during the project. A single asterisk after the expiration date indicates the rate is good for the life of the project.

A double asterisk after the expiration date indicates the rate for work performed after the expiration date has been determined. If work extends past that date, the new rate must be paid and should be incorporated in contracts entered into at the time of bid. Contact DLSR to obtain any predetermined increases.

Overtime

Work performed by employees on public works in excess of eight hours per day and 40 hours per week must be paid for at not less than one-and-one-half times the basic rate of pay (labor code section 1815). Each wage determination will specify the wage rate required for overtime pay. Failure to pay the required rate will subject the contractor to a penalty of \$25 per worker per violation (labor code section 1813).

Holidays

Work performed on certain holidays may require the payment of overtime or double time. A list of designated holidays for each craft or classification of labor can be found on the Division of Labor Statistics and Research (DLSR) Web site at http://www.dir.ca.gov/DLSR/statistics_research.html. Each wage determination will specify the appropriate wage rate for holiday work.

Saturday/Sunday work

Most classifications of workers require the payment of overtime or double time for work performed on Saturdays and Sundays. Each wage determination will specify the required wage rate for this work. Pay attention to any footnotes that may contain exceptions or special requirements.

Travel/subsistence payments

Because the law requires that workers receive the general prevailing rate of per diem as part of the contractor's prevailing wage obligation, there may be a requirement to pay travel/subsistence. Many classifications require the payment of mileage or subsistence for traveling certain distances. These requirements are contained in the collective bargaining agreement on file with DLSR for each craft/classification of worker. You can download those requirements from the DLSR Web site at http://www.dir.ca.gov/DLSR/statistics_research.html.

Owner, operator, partners

The law prescribes that workers on a public works project receive prevailing wages. Owners, partners, owner-operators or officers of corporations performing labor on a prevailing wage project must be paid prevailing wage rates.

Contractor's responsibility for certified payroll

Contractors on the project will be provided information about their responsibilities to pay prevailing wages. This is done through the language in the general conditions of the bidding documents, the contract language, and the pre-job meeting.

A partial list of the requirements follows:

- The contract executed between the prime contractor and the subcontractor for the performance of work on the public works project contains provisions of labor code sections 1771, 1775, 1777.5, 1813 and 1815.
- The prime contractor must monitor the specified determination rate of hourly wages paid by the subcontractor to employees by reviewing the payroll records of each subcontractor.
- Upon becoming aware of the failure of any subcontractor to pay workers the specified per diem wages, the prime contractor must halt or rectify the failure, including, but not limited to, retaining sufficient funds due the subcontractor for work performed on the public works project to cover the wage deficiency and;
- Before making final payment to the subcontractor for work performed on the public works project, the prime contractor must obtain an affidavit, signed under penalty of perjury, from the subcontractor,

stating that he/she has paid the specified, determined prevailing wage rate of per hour wages to employees.

- The contractor must complete a non-performance report form when required. This form is completed when no work is performed on the project for a period of time. On the form the contractor states there was no payroll for a specific time period. All days for a project must be accounted for, including Saturdays, Sundays and holidays.
- Complete the Statement of Employer Payments. This form can be downloaded from <http://www.dir.ca.gov/dlse/DLSEForm-PW26.pdf>. It must be submitted at the time of bid acceptance. The prime contractor must inform the awarding body of any fringe benefit amounts paid on behalf of workers.
- In February and in August of each year during the project, verify changes in wage rates for the trade or classification used on the project. Send in a new statement of employer payments reflecting the changes in wages and/or fringes or training fees. It should be dated accordingly.

Contractor's responsibilities to apprentices

In addition to the items above, there are additional requirements of the contractor regarding the use of apprentices (sections 1777.5 and 1777.6 of the California Labor Code):

- Notify the local apprenticeship committee of the award of a contract by submitting a copy of a Division of Apprenticeship Standards (DAS 140) form for the trades involved. A copy of this form can be printed from <http://www.dir.ca.gov/DAS/DASForm140.pdf>.
- Request the dispatch of apprentices.
- Only employ apprentices who have a written apprenticeship agreement registered with the state, (DAS). Apprentices must be employed according to the ratio set by the apprenticeship program standards, but not less than a 1-to-5 hour ratio, measured against the number of journey person hours worked by the contractor for that particular trade. This rule applies to all apprenticeable trades, in accordance with the rules and regulation of the California Apprenticeship Council (CAC).
- Pay the apprentices the correct wages and benefits.
- Pay to either an apprenticeship committee approved by the DAS or the CAC the apprenticeship fees listed on the wage rate determination for each hour of work for all journey persons and apprentices of that craft on the project.

Penalties

Failure to pay prevailing wages to every worker on the project may result in the contractor being prohibited from bidding on public works projects for three years by the DLSE. In addition, wages not paid become forfeitures and can be collected from the contractor. Fines of up to \$50 per day can also be assessed. The penalties are severe and range from misdemeanors to felonies (labor code sections 1777.5-1777). Although the fundamental obligation to pay prevailing wage rates rests with the contractor, ensuring payment also is important to the district.

Failure to pay required overtime wages will result in the assessment of \$25 per worker per violation.

It is against the law for an employer or other person to accept any compensation from workers on a prevailing wage project. Anyone found guilty of accepting fees, bribes or any other form of compensation or kickbacks from a worker on a prevailing wage project is guilty of a felony. Any person or company that attempts to charge a fee for registration or information about public works employment is guilty of a misdemeanor.

Audit, investigative and enforcement responsibilities

Audit, investigative and enforcement responsibilities are the most challenging aspects of operating a labor compliance program. If these responsibilities are approached objectively and consistently, however, the challenges are far less daunting.

An audit is the comparison of certified payroll records (CPRs) to records or documents maintained independent of CPRs or those records used to gather the information contained in CPRs. These are usually referred to as source documents and include but are not limited to front and back copies of cancelled checks, time cards, copies of pay check stubs, payroll registers, personnel sign in sheets, daily logs and any other document which authenticates or corroborates that which has been reported.

Investigative activities are the duties and tasks engaged in to verify the payment of prevailing wage rates upon receipt of a complaint or in conducting an audit of records. Prior to filing a Notice of Withholding of Contract Payments (see Appendix 2), a school district must demonstrate a thorough and objective investigation took place.

Consequently, all activities aimed at verifying a complaint or the accuracy of records must be documented and maintained in the event of an appeal or litigation.

Enforcement responsibility is extended to agencies by the Division of Labor Standards Enforcement (DLSE) that operate an LCP according to labor code section 1771.5. Enforcement encompasses activities that result in compliance with requirements to pay prevailing wage rates on public works projects. The most common aspect of enforcement is the assessment of penalties and the withholding of back wages owed to workers. It is of utmost importance to develop a fair and objective philosophy and criteria for enforcement and then consistently apply this criterion to each case. The most effective criteria for enforcement are simple written statements with the consequences of the failure to comply clearly stated.

Below is an outline of critical steps for document collection, which should be routinely applied in every prevailing wage violation case and particularly for those cases that lead to the filing of a Notice of Withholding of Contract Payments:

- Copy of worker complaint
 - o Notes from worker interview.
 - o Calendar of dates and hours worked.
 - o Copies of check stubs or other form of proof of underpayment.
 - o Document all attempts to authenticate the complaint.
 - o Other supporting documentation where necessary.

- Copy of all correspondence to contractor
 - o Job-start meeting checklist.
 - o Initial notification of complaint.
 - o Invitation to review the preliminary findings.
 - o Request for additional documentation such as canceled checks, check stubs, time cards, cash receipts, ledgers, etc.
 - o Log of all calls to contractor with notes about the content of discussion.

- Certified payroll records
 - o For the period of time covered in the complaint and the corresponding audit.

- Inspector's daily log
 - o Or another detailed record of work performed by date and the numbers of workers on project.
 - o For the period of time covered in the complaint.

- Correct prevailing wage determination and applicable increases
 - For each classification appearing in the audit.

- Scope of work for trade classifications used
 - From Division Labor Statistics and Research (DLSR).

- Tabulation of bids
 - Advertisement date(s).
 - List of subcontractors.
 - Contract award amounts.
 - Description of project.

- Notice to proceed
 - Official project start and completion dates.
 - Duration of project.

- Notice of completion (if applicable)
 - With date stamp showing when it was recorded.
 - Any withholding or action must take place within 180 days from the date of recording.
 - Another 180 days is granted beyond this date if funds are still available in contract.

- Surety company information
 - The surety is entitled to receive a copy of any action taken or Notice of Withholding of Contract Payments filed.

- Contractor's previous record of violations (if applicable)
 - Formal actions and withholdings.
 - Informal actions and withholdings.

- The Notice of Withholding of Contract Payments (if applicable)
 - Always attach a copy of the audit spreadsheet.

- Release of Notice of Withholding of Contract Payments (if applicable)
 - Returns withheld funds.
 - Filed when a case is settled in whole or part.
 - Filed when it is determined the violation did not occur.

- Memo to file
 - Explains circumstances and reasons for case closure without action.
 - Provides explanation and reasons for settlement and spells any agreements reached with contractor or other parties.

- DLSE Forms
 - Notice of Withholding of Contract Payments
 - Notice of Transmittal
 - Notice of Opportunity to Review Evidence
 - Public Works Contract Award Form DAS 140, <http://www.dir.ca.gov/DAS/DASForm140.pdf>
 - Certified Payroll Reporting Form A-1-131, <http://www.dir.ca.gov/dlse/publicWorksPayrollInstructions.htm>
 - Statement of Employer Payments of PW 26, <http://www.dir.ca.gov/dlse/DLSEForm-PW26.pdf>
 - California Apprenticeship Council 2 Training Fund Contributions, <http://www.dir.ca.gov/DAS/DASCAC2.pdf>

Appendix A

Third Party LCP for _____ The Labor Compliance Managers 515 Blueberry Terrace San Jose, CA 95129 (408) 255-2844 (408) 255-2053 Fax	(SEAL)
Date: _____	In Reply Refer to Case No.: _____

Notice of Withholding of Contract Payments

Awarding Body _____	Work Performed in County of _____
Project Name _____	Project No. _____
Prime Contractor _____	
Subcontractor _____	

After an investigation concerning the payment of wages to workers employed in the execution of the contract for the above-named public works project, the Labor Compliance Program for _____ (A Labor Compliance Program) has determined that violations of the California Labor Code have been committed by the contractor and/or subcontractor identified above. In accordance with Labor Code sections 1771.5 and 1771.6, the Labor Compliance Program hereby issues this Notice of Withholding of Contract Payments.

The nature of the violations of the Labor Code and the basis for the assessment are as follows:

The Labor Compliance Program has determined that the total amount of wages due is: \$_____

The Labor Compliance Program has determined that the total amount of penalties assessed under Labor Code sections 1775 and 1813 is: \$_____

The Labor Compliance Managers has determined that the amount of penalties assessed under Labor Code section 1776 is: \$_____

The Labor Compliance Managers

By: _____

Notice of Right to Obtain Review - Formal Hearing

In accordance with Labor Code sections 1742 and 1771.6, an affected contractor or subcontractor may obtain review of this Notice of Withholding of Contract Payments by transmitting a written request to the office of the Labor Compliance Program that appears below within 60 days after service of the notice. **To obtain a hearing, a written Request for Review must be transmitted to the following address:**

The Labor Compliance Managers

Review Office-Notice of Withholding of Contract Payments

A **Request for Review** either shall clearly identify the Notice of Withholding of Contract Payments from which review is sought, including the date of the notice, or it shall include a copy of the notice as an attachment, and shall also set forth the basis upon which the notice is being contested. In accordance with Labor Code section 1742, the contractor or subcontractor shall be provided an opportunity to review evidence to be utilized by the Labor Compliance Program at the hearing within 20 days of the Labor Compliance Program's receipt of the written **Request for Review**.

Failure by a contractor or subcontractor to submit a timely Request for Review will result in a final order which shall be binding on the contractor and subcontractor, and which shall also be binding, with respect to the amount due, on a bonding company issuing a bond that secures the payment of wages and a surety on a bond. Labor Code section 1743.

In accordance with Labor Code section 1742(d), 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.

(continued on next page)

Opportunity for Settlement Meeting

In accordance with Labor Code Section 1742.1 (b), the Labor Compliance Program shall, upon receipt of a request from the affected contractor or subcontractor within 30 days following the service of this Notice of Withholding of Contract Payments, afford the contractor or subcontractor the opportunity to meet with the Labor Compliance Program's designee **to attempt to settle a dispute regarding the notice**. The settlement meeting may be held in person or by telephone and shall take place before the expiration of the 60-day period for seeking a hearing as set forth above under the heading Notice of Right to Obtain Review. No evidence of anything said or any admission made for the purpose of, in the course of, or pursuant to, the settlement meeting is admissible or subject to discovery in any administrative or civil proceeding. No writing prepared for the purpose of, in the course of, or pursuant to, the settlement meeting, other than a final settlement agreement, is admissible or subject to discovery in any administrative or civil proceeding. This opportunity to timely request an informal settlement meeting is **in addition** to the right to obtain a formal hearing, and a settlement meeting may be requested even if a written **Request for Review** has already been made. Requesting a settlement meeting, however, does not extend the 60-day period during which a formal hearing may be requested.

A written request to meet with the Labor Compliance Program's designee to attempt to settle a dispute regarding this notice must be transmitted to _____ at the following address:

Liquidated Damages

In accordance with Labor Code section 1742.1, after 60 days following the service of this Notice of Withholding of Contract Payments, the affected contractor, subcontractor, and surety on a bond or bonds issued to secure the payment of wages covered by the notice shall be liable for liquidated damages in an amount equal to the wages, or portion thereof that still remain unpaid. If the notice subsequently is overturned or modified after administrative or judicial review, liquidated damages shall be payable only on the wages found to be due and unpaid. If the contractor or subcontractor demonstrates to the satisfaction of the Director of the Department of Industrial Relations that he or she had substantial grounds for believing the assessment or notice to be an error, the Director shall waive payment of the liquidated damages.

The Amount of Liquidated Damages Available Under this Notice is \$_____.

Distribution:

- Prime Contractor
- Subcontractor
- Surety(s) on Bond

Appendix B

Third Party LCP for _____ The Labor Compliance Managers 515 Blueberry Terrace San Jose, CA 95129 (408) 255-2844 (408) 255-2053 Fax	(SEAL)
Date:	In Reply Refer to Case No.:

Notice of Transmittal

To: Department of Industrial Relations
Office of the Director-Legal Unit
Attention: Lead Hearing Officer
P. O. Box 420603
San Francisco, CA 94142-0603

Enclosed herewith please find a Request for Review, dated _____, postmarked _____, and received by this office on _____.

Also enclosed please find the following:

- _____ Copy of Notice of Withholding of Contract Payments
- _____ Copy of Audit Summary

The Labor Compliance Managers

By: _____

cc: Prime Contractor
Subcontractor
Bonding Company

Please be advised that the Request for Review identified above has been received and transmitted to the address indicated. Please be further advised that the governing procedures applicable to these hearings are set forth at Title 8, California Code of Regulations sections 17201-17270. These hearings are **not** governed by Chapter 5 of the Government Code, commencing with section 11500.

Appendix C

Third Party LCP for _____ The Labor Compliance Managers 515 Blueberry Terrace San Jose, CA 95129 (408) 255-2844 (408) 255-2053 Fax	(SEAL)
Date:	In Reply Refer to Case No.:

Notice of Opportunity to Review Evidence Pursuant to Labor Code Section 1742(b)

To: Prime Contractor

Subcontractor

Please be advised that this office has received your **Request for Review**, dated _____, and pertaining to the Notice of Withholding of Contract Payments issued by the Labor Compliance Program in Case No. _____.

In accordance with Labor Code section 1742(b), this notice provides you with an opportunity to review evidence to be utilized by the Labor Compliance Program at the hearing on the Request for Review, and the procedures for reviewing such evidence.

Rule 17224 of the Prevailing Wage Hearing Regulations provides as follows:

A(a) Within ten (10) days following its receipt of a Request for Review, the Enforcing Agency shall also notify the affected contractor or subcontractor of its opportunity and the procedures for reviewing evidence to be utilized by the Enforcing Agency at the hearing of the Request for Review.

(b) An Enforcing Agency shall be deemed to have provided the opportunity to review evidence required by this Rule if it (1) gives the affected contractor or subcontractor the option at said party's own expense to either (i) obtain copies of all such evidence through a commercial copying service or (ii) inspect and copy such evidence at the office of the Enforcing Agency during normal business hours; or if (2) The Enforcing Agency at its own expense forwards copies of all such evidence to the affected contractor or subcontractor.

(c) The evidence required to be provided under this Rule shall include the identity of witnesses whose testimony the Enforcing Agency intends to present, either in person at the hearing or by declaration or affidavit. This provision shall not be construed as requiring the Enforcing Agency to prepare or provide any separate listing of witnesses whose identities are disclosed within the written materials made available under subpart (a).

(d) The Enforcing Agency shall make evidence available for review as specified in subparts (a) through (c) within 20 days of its receipt of the Request for Review; *provided that*, this deadline may be extended by written request or agreement of the affected contractor or subcontractor. The Enforcing Agency's failure to make evidence available for review as required by Labor Code Section 1742(b) and this Rule, shall preclude the enforcing agency from introducing such evidence in proceedings before the Hearing officer or the Director.

(e) This Rule shall not preclude the Enforcing Agency from relying upon or presenting any evidence first obtained after the initial disclosure of evidence under subparts (a) through (d), *provided that*, such evidence is promptly disclosed to the affected contractor or subcontractor. This Rule also shall not preclude the Enforcing Agency from presenting previously undisclosed evidence to rebut new or collateral claims raised by another party in the proceeding. @

In accordance with the above Rule, please be advised that the Labor Compliance Program's procedure for you to exercise your opportunity to review evidence is as follows:

Within five calendar days of the date of this notice, please transmit the attached Request to Review Evidence to the following address:

Attention: _____

Request to review evidence

To: _____

From: _____

Regarding Notice of Withholding of Contract Payments Dated _____

Our Case No.: _____

The undersigned hereby requests an opportunity to review evidence to be utilized by The Labor Compliance Managers at the hearing on the Request for Review.

Phone No.: _____
Fax No.: _____

Appendix D

Commonly used terms

Awarding body	Owner of project, body awarding contract
CAC	California Apprenticeship Council
CCR	California Code of Regulations
CFR	Code of Federal Regulations
CPR	Certified payroll record
DAS	Division of Apprenticeship Standards
DIR	Department of Industrial Relations
DLSE	Division of Labor Standards Enforcement
DLSR	Division of Labor Statistics & Research
DSA	Department of State Architect
FBS	Fringe benefit statement
IOR	Inspector of Record, DSA assigned building inspector
JATC	Joint apprenticeship training committee
LCP	Labor compliance program
LEA	Local education agency
PW	Public works or prevailing wage, depending on context
PWD	Prevailing wage division
T&M	Time & material

Appendix E

Checklist of labor law requirements

District labor compliance program (Pursuant to CCR 16430)

The federal and state labor law requirements applicable to the contract are composed of but not limited to the following:

1. **Payment of prevailing wage rates**

The contractor to whom the contract is awarded and its subcontractors hired for the public works project are required to pay the specified general prevailing wage rates to all workers employed in the execution of the contract. The contractor's duty to pay prevailing wages under labor code section 1770 et seq., should the project exceed the exemption amounts.

The contractor is responsible for ascertaining and complying with all current general prevailing wage rates for crafts and any rate changes that occur during the life of the contract. Information on all prevailing wage rates and all rate changes are to be posted at the job site for all workers to view.

2. **Apprentices**

It is the duty of the contractor and subcontractors to employ registered apprentices on the public works project under labor code section 1777.5.

3. **Penalties**

There are penalties required for contractor or subcontractor failure to pay prevailing wages (for nonexempt projects) and for failure to employ apprentices including forfeitures and debarment under labor code sections 1775, 1777.7 and 1813.

4. **Certified payroll records**

Contractors and subcontractors are required to keep accurate payroll records showing the name, address, social security number and work classification of each employee and owner performing work, the straight time and overtime hours worked each day and each week, the fringe benefits, and the actual per diem wage paid to each owner, journey person, apprentice worker or other employee hired for the public works project under labor code section 1776.

Employee payroll records shall be certified and shall be made available for inspection at all reasonable hours at the principal office of the contractor or subcontractor or shall be furnished to any employee, or his/her authorized representative on request, according to labor code section 1776.

Each contractor and subcontractor shall submit its certified payroll record to the district on a weekly basis. If there was no work performed during a given week, the certified payroll record shall be annotated: "no work" for that week.

There are penalties required for contractor/subcontractor's failure to maintain and submit copies of certified payroll records on request under labor code section 1776 (g).

5. **Nondiscrimination in employment**

Employment discrimination is prohibited under labor code sections 1735 and 1777.6, the government code, the public contracts code, and Title VII of the Civil Rights Act of 1964, as amended. All contractors and subcontractors are required to implement equal employment opportunity practices for women and minorities as delineated below:

a. **Equal employment poster**

The equal employment poster shall be posted at the job site in a conspicuous place, available to employees and applicants for employment and shall remain posted for the duration of the project.

6. **Kickbacks prohibited**

Contractors and subcontractors are prohibited from accepting, taking wages illegally or extracting "kickback" from employee wages under labor code section 1778.

7. **Acceptance of fees prohibited**

Contractors or subcontractors are prohibited from accepting fees for registering any person for public work under labor code section 1779 or for filling work orders on public works contracts pursuant to labor code section 1780.

8. **Listing of subcontractors**

All prime contractors are required to list properly all subcontractors hired to perform work on the public works projects covering more than one-half of 1 percent, according to government code section 4100 et seq.

9. **Proper licensing**

Contractors are required to be licensed properly and to require that all subcontractors be properly licensed. Penalties are required for employing workers while unlicensed under labor code section 1021 and under the California Contractor License Law found at business and professions code section 7000 et seq.

10. **Unfair competition prohibited**

Contractors and subcontractors are prohibited from engaging in unfair competition as specified under business and professions code sections 17200 to 17208.

11. **Workers' compensation insurance**

Labor code section 1861 requires contractors and subcontractors be insured properly for workers' compensation.

12. **OSHA**

Contractors and subcontractors are required to abide by the occupational, safety and health laws and regulations that apply to the particular construction project.