

BEFORE THE BOARD OF SUPERVISORS

of the

SAN LUIS OBISPO COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT

_____ day _____, 20__

PRESENT: Supervisors

ABSENT:

RESOLUTION NO. _____

RESOLUTION ADOPTING A LABOR COMPLIANCE PROGRAM FOR COUNTY FLOOD CONTROL DISTRICT PROJECTS IN CONFORMANCE WITH PUBLIC RESOURCE CODE 75075

The following resolution is now offered and read:

WHEREAS, Proposition 84, the Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Act of 2006, was approved by voters in November 2006; and

WHEREAS, Proposition 84 provides \$5.388 billion in funding for State and Local water resource projects; and

WHEREAS, the San Luis Obispo County Flood Control And Water Conservation District (District) has sought and received funding for Proposition 84 funds for water resource project implementation; and

WHEREAS, pursuant to Section 8 of the San Luis Obispo County Flood Control and Water Conservation District Act (1945 ch 1294), the employees of the San Luis Obispo County Department of Public Works And Transportation (“San Luis Obispo County Public Works”) and the County Public Works Director are ex officio officers and employees of the District, and shall respectively perform the same various duties for the District as they do for San Luis Obispo County; and

WHEREAS, the Public Resource Code Section 75075 requires local governing boards to adopt a Labor Compliance Program, consistent with the California Labor Code, for use on Proposition 84 funded projects; and

WHEREAS, the Labor Compliance Program seeks to ensure that workers employed by contractors on these projects are paid according to minimum labor standards; and

WHEREAS, the District is prepared for use the attached Local Compliance Program for Proposition 84 funded projects.

NOW, THEREFORE, BE IT RESOLVED AND ORDERED by the Board of Supervisors of the San Luis Obispo County Flood Control And Water Conservation District (District), State of California, that:

1. The attached Labor Compliance Program for San Luis Obispo County Public Works is hereby adopted in conformance with Public Resource Code Section 75075 for projects funded by Proposition 84 that are implemented by the District.
2. The Director of Public Works on behalf of the District, or his designee, is authorized to submit the LCP to the California Department of Industrial Relations (DIR) for its approval, and may sign any applications or make revisions to documents as required by DIR to obtain DIR approval of the LCP (so long as such documents do not subject the District to any liability that it is not otherwise provided for under the LCP or applicable law).
3. The Director of Public Works is authorized to engage outside specialized consultant to provide any necessary oversight and enforcement required under Proposition 84, the adopted Labor Compliance Program and any subsequent direction of the DIR.

Upon motion of Supervisor _____, seconded by Supervisor _____, and on the following roll call vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAINING:

the foregoing resolution is hereby adopted on the ____ day of _____, 20__.

Chairperson of the Board of Supervisors

ATTEST:

Clerk of the Board of Supervisors

[SEAL]

APPROVED AS TO FORM AND LEGAL EFFECT:

RITA L. NEAL
County Counsel

By: 
Deputy County Counsel

Dated: October 23, 2014

STATE OF CALIFORNIA, }
County of San Luis Obispo, ss.

I, _____, County Clerk and ex-officio Clerk of the Board of Supervisors of the San Luis Obispo County Flood Control and Water Conservation District, do hereby certify the foregoing to be a full, true and correct copy of an order made by the Board of Supervisors, as the same appears spread upon their minute book.

WITNESS my hand and the seal of said Board of Supervisors, affixed this _____ day of _____, 20 _____.

(SEAL) _____
County Clerk and Ex-Officio Clerk of the Board
of Supervisors

By _____
Deputy Clerk.

San Luis Obispo County
DEPARTMENT OF PUBLIC WORKS



Labor Compliance Program
For Projects Under
Public Resource Code Section 75075
October 2014



San Luis Obispo County
Department of Public Works
County Government Center Room 206
San Luis Obispo, CA 93408
Phone 805/781-5252
Fax 805/781-1229

Dave Flynn
Acting Director

**SAN LUIS OBISPO COUNTY
PUBLIC WORKS (SLOCPW)**

**LABOR COMPLIANCE PROGRAM
MANUAL**

SLOCPW
Labor Compliance Program
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PART I - REQUIREMENTS

SAN LUIS OBISPO COUNTY PUBLIC WORKS LABOR COMPLIANCE PROGRAM REQUIREMENTS

I. INTRODUCTION

San Luis Obispo County Public Works (SLOCPW) is establishing this Labor Compliance Program (LCP) pursuant to California Public Resource Code 75075 and California Labor Code Section 1771.5. Pursuant to Public Resource Code 75075, this LCP only applies to public works projects funded under Proposition 84.

II. LABOR COMPLIANCE COMPOSITION AND REQUIREMENTS

- a.) Pursuant to Labor Code Section 1771.5, the SLOCPW requires the payment of the general prevailing rate of per diem wages and the general prevailing rate of per diem wages for holiday and overtime work.
- b.) The Labor Compliance Program monitors labor standards compliance by conducting interviews with construction workers at the job site and reviewing certified payroll reports and initiates and oversees any enforcement actions that may be required.

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

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

This labor compliance program (“LCP”) contains the labor compliance standards required by state statutes, regulations, and directives, which include, but are not limited to, the following:

1. Contractors’ payment of applicable general prevailing wage rates.
2. Contractors’ employment of properly registered apprentices.
3. Contractors’ provide certified payroll records upon request but not less than weekly.
4. Program’s monitoring the SLOCPW construction sites for the verification of proper payments of prevailing wage rates and work classification.
5. Programs conducting pre-job conferences with contractors/subcontractors.
6. Program’s withholding contract payments and imposing penalties for noncompliance.
7. Program’s preparation and submittal of annual reports as required.

The SLOCPW Labor Compliance Program (“LCP”) purpose is to implement its policy relative to the labor compliance provisions of state public works contracts and specifically to comply

with the provisions of the Public Resources Code Section 75075 sections by use of funds derived from the California Department of Public Health.

The California Labor Code Section 1770, et seq., and Public Resources Code Section 75075 require that 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.

Public Resources Code 75075: The body awarding any contract for a public works project financed in any part from funds made available pursuant to this 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.

In establishing this LCP, the SLOCPW adheres to the statutory requirements as enunciated in Section 1771.5 of the Labor Code. Further, it is the intent of the SLOCPW to actively enforce this LCP by monitoring construction sites for the payment of prevailing wage rates, and by requiring contractors and subcontractors having workers on job sites to submit copies of certified payroll records demonstrating their compliance with the payment of prevailing wage rates.

Should applicable sections of the Labor Code or Title 8 of the California Code of Regulations undergo alteration, amendment, or deletions, the SLOCPW will modify the affected portions of this program accordingly.

III. PUBLIC WORKS CONSTRUCTION PROJECTS

This LCP is subject to the provisions of the State laws and regulations including, but not limited to, California Labor Code Sections 226, 227, 1021, 1021.5, 3093, 3077 and 1720 through and including 1861, together with all applicable regulations (e.g., Title 8 California Code of Regulations Section 16001 et seq.). All pertinent California statutes and regulations, including those referenced above, are hereby incorporated by reference in this document as if set forth in their entirety.

IV. 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).

V. YOUTH EMPLOYMENT PROGRAMS

Youths (ages 18 – 23) employed on Public Works projects are subject to the payment of the prevailing wage.

VI. CASH PAYMENTS PROHIBITED

The SLOCPW 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.**

VII. WORKERS DEFINED

The SLOCPW defines "worker" as defined in Labor Code Section 1723, and other applicable law, including Corporate Officers, Partners, Sole Owners, Mechanics and Laborers employed or working on the site of the Work who are subject to any applicable provisions of the Labor Code. Such workers will be paid unconditionally and not less than once a week, and without subsequent deduction or rebate on any account the full amounts due at time of payment computed at wage rates not less than those contained in the wage determination decisions of the State of California Director of the Department of Industrial Relations (DIR).

VIII. PREVAILING WAGES

Payments of wages not less than those contained in the wage determination decision of the State of California Director of the Department of Industrial Relations (DIR) are in effect under this LCP. Any classes of laborers or mechanics, including apprentices, which are not listed in the applicable wage determination shall be classified in conformance with the applicable wage determination. If the Contractor fails to request a special determination (CCR 8 §16202) within 45 days after the commencement of advertising of the call for bids, and the classification of laborers and mechanics, including apprentices, is not found in the applicable wage determination, the SLOCPW reserves the right to re-classify the affected class of laborers and/or mechanics, including apprentices, to the most closely related craft as published in the applicable wage determination. If the interested parties cannot agree on the proper classification or re-classification of a particular class of laborers or mechanics, including apprentices, to be used, the question accompanied by the recommendation of the SLOCPW shall be referred to the DIR for final determination.

IX. EFFECTIVE PREVAILING WAGE RATES

The State Prevailing Wage Rates are determined by the Department of Industrial Relations as prescribed in Labor Code Sections 1773 – 1773.1 and are effective 10 days after issuance. The established Prevailing Wage rates are published in the General Prevailing Wage Determinations which are issued bi-annually (occasionally, the DIR may issue an additional General Prevailing Wage Determination in the same year). The **Bid Advertise Date** determines the applicable General Prevailing Wage Determination. The expiration date indicated for each craft is followed by either a single asterisk (*) or double asterisk (**). The single asterisk (*) indicates that the wage rate will remain constant and effective throughout the duration of the contract. The double asterisk (**) indicates that the wage rate is effective until the expiration date, and the rate to be paid for work performed after that date has already been determined. If work will extend past the expiration date, the new rate must be paid. (CCR 8, §16204).

To obtain the most current prevailing wage rates, contact the Department of Industrial Relations. The rates are also available on the internet at www.dir.ca.gov.

X. PAYMENT OF PREVAILING WAGE FRINGE BENEFITS

Per diem wages shall be deemed to include employer payments for health and welfare, pension, vacation, travel time, training contributions and subsistence pay as provided for in Section 1773.8, for apprenticeship or other training programs, authorized by Section 3093. (Contractors paying per diem wages cannot pay less than the basic hourly rate of pay to the worker working on a covered prevailing wage. (CCR 8, §16000))

A copy of California Public Works Form PW-26, *Fringe Benefits Statement*, (**Addendum J**) must be prepared by the Contractor and submitted to the SLOCPW with the first payroll. Contractors not making payments to a fringe benefit trust account shall include the total fringe benefit package in the Total Hourly Wage Rate paid to the worker.

XI. APPRENTICESHIP REQUIREMENTS

Contractors shall comply with the requirements of the apprenticeship provisions of California Labor Code Section 1777.5 and CCR Title 8 230.1.

APPRENTICES

In accordance with California Labor Code Section 1777.5(d), a contractor (including any subcontractor) who is awarded a Proposition 84 funded contract, and who employs workers in an apprenticeable craft or trade, shall employ apprentices in at least the ratios as stipulated in Labor Code Section 1777.5.

Regulation 230.1

Regarding Employment of Apprentices on Public Works.

CCR Title 8 230.1. Employment of Apprentices on Public Works.

“(a) Contractors, as defined in Section 228 to include general, prime, specialty or subcontractor, shall employ registered apprentice(s), as defined by Labor Code Section 3077, during the performance of a public work project in accordance with the required one hour of work performed by an apprentice for every five hours of labor performed by a journeyman, unless covered by one of the exemptions enumerated in Labor Code Section 1777.5 or this subchapter. Unless an exemption has been granted, the contractor shall employ apprentices for the number of hours computed above before the end of the contract. Contractors who are not already employing sufficient registered apprentices (as defined by Labor Code Section 3077) to comply with the one-to-five ratio must request the dispatch of required apprentices from the apprenticeship committees providing training in the applicable craft or trade and whose geographic area of operation includes the site of the public work by giving the committee written notice of at least 72 hours (excluding Saturdays, Sundays and holidays) before the date on which one or more

apprentices are required. If the apprenticeship committee from which apprentice dispatch(es) are requested does not dispatch apprentices as requested, the contractor must request apprentice dispatch(es) from another committee providing training in the applicable craft or trade in the geographic area of the site of the public work, and must request apprentice dispatch(es) from each such committee, either consecutively or simultaneously, until the contractor has requested apprentice dispatches from each such committee in the geographic area. All requests for dispatch of apprentices shall be in writing, sent by first class mail, facsimile or email. Except for projects with less than 40 hours of journeyman work, each request for apprentice dispatch shall be for not less than an 8 hour day per each apprentice, or 20% of the estimated apprentice hours to be worked for an employer in a particular craft or trade on a project, whichever is greater, unless an employer can provide written evidence, upon request of the committee dispatching the apprentice or the Division of Apprenticeship Standards, that circumstances beyond the employer's control prevent this from occurring. If a non-signatory contractor declines to abide by and comply with the terms of a local committee's standards, the apprenticeship committee shall not be required to dispatch apprentices to such contractor. Conversely, if in response to a written request no apprenticeship committee dispatches, or agrees to dispatch during the period of the public works project any apprentice to a contractor who has agreed to employ and train apprentices in accordance with either the apprenticeship committee's standards or these regulations within 72 hours of such request (excluding Saturdays, Sundays and holidays) the contractor shall not be considered in violation of this section as a result of failure to employ apprentices for the remainder of the project, provided that the contractor made the request in enough time to meet the above-stated ratio. If an apprenticeship committee dispatches fewer apprentices than the contractor requested, the contractor shall be considered in compliance if the contractor employs those apprentices who are dispatched, provided that, where there is more than one apprenticeship committee able and willing to unconditionally dispatch apprentices, the contractor has requested dispatch from all committees providing training in the applicable craft or trade whose geographic area of operation include the site of the public work. Nothing in this section shall affect the right of a Contractor who participates in and employs registered apprentices from programs approved under Labor Code Section 3075 outside the geographic area of the public work from employing said apprentice(s) on the site of the public work in order to meet the ratio requirement of Labor Code Section 1777.5.

(b) Apprentices employed on public works shall be paid the applicable apprentice prevailing per diem wage rate, available from DAS, and derived from the Director's survey of wages paid on public works in the geographic area of the craft or trade. DAS shall refer complaints alleging any contractor's failure to pay the proper apprentice prevailing wage rate on a public works project to the Division of Labor Standards Enforcement for investigation and appropriate action.

(c) Apprentices employed on public works can only be assigned to perform work of the craft or trade to which the apprentice is registered. Work of the craft or trade consists of job duties normally assigned to journeymen in the apprenticeable occupation. Where an employer employs apprentices under the rules and regulations of the California Apprenticeship Council, as set forth in Labor Code Section 1777.5(c) (2), apprentices employed on public works must at all times work with or under the direct supervision of journeyman/men. The on-the-job training shall be in accordance with the apprenticeship standards and apprenticeship agreement under which the apprentice is training, provided that a contractor shall not be subject to any financial or

administrative obligations to a trust fund or employee benefit plan unless the contractor has so agreed.”

The wage rates paid to the apprentices shall not be less than the applicable wage determination as determined by the Department of Industrial Relations Division of Apprenticeship Standards (Contact DAS at (415) 703-4920 or at their website: www.dir.ca.gov/DAS).

RATIOS

The ratio of apprentice work to journeyman work shall conform to the requirements as mandated in Section 1777.5 of the California Labor Code. In the event that the Contractor fails to comply with apprenticeship requirements as mandated by California Labor Code Section 1777.5, the Contractor shall be subject to penalties in accordance with California Labor Code Section 1777.7.

If the Contractor fails to comply with the ratios as determined by the DAS, the SLOCPW will issue a “Notice of Reprimand” and forward the matter to the DAS.

All apprentices shall work under the direct supervision of a journeyman from the trade in which the apprentice is indentured. A journeyman shall be defined as set forth in the California Code of Regulations, Title 8 [apprenticeship] section 205, which defines a journeyman as a person who has either completed an accredited apprenticeship in his or her craft, or has completed the equivalent of an apprenticeship in length and content of work experience and all other requirements in the craft which has workers classified as journeyman in the apprenticeable occupation.

Contractors may use the following DAS apprenticeship forms (**Addendum I**) or a similar form that contains the required language when notifying the apprenticeship committees of a contract award, the dispatching of an apprentice and payment of the training fund contributions.

- DAS-140/ Notification of Contract Award
- DAS-142/ Request for Dispatch of Apprentice
- CAC-2/ Training Fund Contribution

XII. LIABILITY FOR UNPAID WAGES

- a.) As required by Labor Code Section 1775, the Contractor and any Subcontractor shall forfeit to the SLOCPW not more than two hundred dollars (\$200) per day for each worker who is paid less than the prevailing wage rate (including fringe benefits) required.

Additionally, Section 1813 of the Labor Code requires the Contractor or subcontractor to forfeit twenty-five dollars (\$25) to the SLOCPW for each worker employed in the execution of the Contract for each calendar day a worker is permitted or required to work in excess of 8 hours per day or 40 hours per week at a rate less than 1 ½ times the hourly rate of pay for the worker classification involved.

Moreover, the SLOCPW may withhold payment from the Contractor to ensure that the Contractor's obligation to pay prevailing wage rates is met.

- b.) 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.

XIII. POSTINGS

The Contractor shall post at each job site, in a conspicuous location readily available to the workers, a copy of all applicable wage determinations as well as notification that the project is a public works project as defined in Labor Code Section 1720 et seq.

XIV. LABOR COMPLIANCE MONITORING PROGRAM

The Contractor, and all subcontractors, shall cooperate in allowing approved representatives of the Labor Compliance Program access to the project job site for the purpose of conducting worker interviews to insure compliance with the requirement to pay proper prevailing wages on all projects.

A representative must at all times identify himself or herself while on the job site, and must restrict their actions to interviewing workers employed on the project.

XV. CERTIFIED PAYROLL RECORDS

- a.) The Contractor shall adhere to the provisions of Labor Code Section 1776.
- b.) The payroll records referred to must include the employee's:
 - A. name;
 - B. address;
 - C. social security number;
 - D. work classification;
 - E. straight time hours per day and total per week;
 - F. overtime hours per day and total per week;
 - G. gross wages earned this project;
 - H. gross wages earned on all other projects;
 - I. itemized deductions;
 - J. actual per diem wages paid; and
 - K. payroll check numbers.

In addition, the records must identify apprentices and the ratio of apprentices to journeymen.

- c.) The copy of payrolls shall be submitted to the SLOCPW weekly and shall be accompanied by a Certification, signed in ink by the Contractor or the contractor's agent attesting that the payrolls are correct and complete and the wage rates contained therein are not less than those set by the applicable wage determinations incorporated into this LCP. Provided all information and certifications required by

California law are included therein, the Contractor may use the provided Certified Payroll Report or any form approved by the DIR or use its own payroll form provided it includes the same information and certifications. The SLOCPW reserves the right to **reject incomplete** payroll reports and request re-submittal of complete reports. (The DIR A-1-131 payroll reporting form and accompanying fringe benefit form is recommended. (**Addendum J**))

- d.) The Contractor shall be responsible for the submission of copies of payrolls of any and all Subcontractors. In the event that subcontractor payrolls are not submitted, the SLOCPW may withhold contract payments from the Contractor.
- e.) Payroll data pertaining to owner-operators must be submitted on Certified Payroll Reports, including a copy of the DMV vehicle registration of the Owner-Operator with the first payroll that this owner-operators name appears on the certified payroll. Listing any individual as “Owner- Operator” **will not** be accepted as the classification is not recognized by the California Department of Industrial Relations’ Division of Labor Statistics and Research.

All payrolls are to be submitted to:

San Luis Obispo Department of Public Works
County Government Center, Room 206
San Luis Obispo, CA 93408

- f.) As required by Labor Code Section 1776 (h), the Contractor shall forfeit to the SLOCPW one hundred dollars (\$100) per day, per worker, for failing to comply strictly with requests by the SLOCPW for submittal of payroll documents and all supporting documents which include, but are not limited to, cancelled checks, time sheets, W-4 Forms, W-2 Forms, DE-6 Forms, and any other forms utilized in the course of business that are relevant to the payment of wages. In addition, according to California Labor Code Section 1777.1(c), the Contractor may also be subject to debarment by the Labor Commissioner for failure to furnish certified payroll records within thirty (30) days after receipt of the written notice for such records.

XVI. WORKING HOURS

- a.) Generally, the Contractor shall not employ a worker more than eight (8) hours in a calendar day or forty (40) hours in a calendar week except upon compensation of one and one-half (1½) times the basic rate of pay for all hours worked in excess of eight (8) hours per day and forty (40) hours per week. Special rules may apply to specific worker classifications. See applicable wage determinations for overtime definitions. Recognized holidays shall be consistent with area practice in determining the applicability of overtime wage rates.

XVII. WITHHOLDING PAYMENTS FOR LABOR COMPLIANCE VIOLATIONS

In accordance with Labor Code Section 1727, the SLOCPW 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 apprentice, employed or working on the site of the Work, all or part of wages required by the contract, the SLOCPW 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.

In accordance with Labor Code Section 1771.5, the SLOCPW may withhold contract payments when payroll records are delinquent or inadequate.

XVIII. DISPUTES

The SLOCPW Labor Compliance Program shall adhere to the provisions of Labor Code Section 1771.6 and will provide the Contractor or Subcontractor an opportunity for review of assessed wages and penalties pursuant to the provisions of Labor Code Section 1742.

PART II - ENFORCEMENT

LABOR COMPLIANCE PROGRAM

I. LABOR COMPLIANCE PROGRAM COMPONENTS

Calls for Bids/ Contracts

The SLOCPW will secure the State wage determinations, and make them available to any interested party for each public works contract funded under Proposition 84, thus assuring contractors bidding a project are aware of the requirements of Chapter 1 of Part 7 of Division 2 of the State Labor Code. Additionally, each contractor securing a contract on such a public works project is required to sign an acknowledgment that he or she understands the prevailing wage requirements and that contract payments shall not be made when payroll records are delinquent or inadequate.

Preconstruction Conference

One of the most important aspects of assuring labor compliance on a project is to conduct a thorough pre-construction conference with the general contractor and the subcontractors. The conference sets forth the framework in establishing the labor standards parameters. The SLOCPW conference agenda includes discussion and handouts of the following items:

1. Appropriate State Wage Determination
2. State Labor Standard Provisions (Labor Code Sections 1720, i.e.)
3. Payroll Reporting Forms (A-1-131 Form) and Certification
4. Certification of Applicable Fringe Benefit Payments
5. Contractor's/Subcontractor's Certification Concerning Labor Standards and Prevailing Wages
6. Posting Requirement of Notice to All Employees (General Contractor)
7. Suggested Checklist of Labor Law Requirements (CCR 16430) (Addendum K)

Contractor Eligibility Verification

Prior to awarding a contract, the SLOCPW shall verify that the successful bidder and all contractors are not on the state list of ineligible contractors, that they possess a valid state contractor's license and meet other licensing requirements, e.g. workers compensation insurance.

Certified Payroll Records

The SLOCPW reviews all of the certified payroll records (A-1-131 form) on a weekly basis and compares them to the wage decision and/or wage determination in effect. Improprieties or inadvertent errors on the payrolls are communicated in writing to the general contractor with a request for corrective action within a 20 day time period.

On-Site Monitoring

A significant step in determining project labor standards compliance is to conduct frequent on-site employee interviews. It is critical to have early detection of potential violations. The results of the interviews are compared to the contractor's certified payroll records to ascertain that the correct classification, hours and wages were paid. The mailing of employee questionnaires may also be utilized when it is cumbersome or employees are reluctant to be interviewed on-site.

Payroll Audits

Appropriately, upon receipt of certified payroll records, employee interview forms and other available documents, i.e. inspector daily logs, etc., the SLOCPW may conduct various payroll audits to determine if through its examination of records, the prime and subcontractors have met labor standards compliance. At its conclusion, they will submit written notification of its findings to the appropriate party with a recommendation for disbursement of retention payments.

Withholding of Penalties, Forfeitures and Underpayments of Wages for Violations of Prevailing Wage Laws

The SLOCPW maintains with awarding bodies in establishing a special account for depositing funds withheld for wage restitution and/or penalties. A contractor is notified in writing specifying the reasons for the withholding or suspension of contract payments.

Should a contractor refuse to make such restitution as requested, the SLOCPW may through its LCP, disburse or cause to be disbursed out of withheld funds for and on account of the contractor, moneys to the respective employees. Should a contractor dispute the basis of the findings, such funds will not be disbursed; the contractor will be advised on his rights for appealing through the Department of Industrial Relations, Division of Labor Standards Enforcement.

Willful violations of public work laws pursuant to Labor Code Section 1777.1 (c) shall be reported to the State Labor Commissioner in writing within 30 days from the time the LCP became aware specifying the name and address of the contractor, the public works project, the awarding agency, and the amount of money withheld by the awarding body.

II. FILING OF STATEMENTS OF ECONOMIC INTEREST (EPPC FORM 700 - ADDENDUM A)

The SLOCPW shall determine and designate those employees and consultants of the program who participate in making governmental decisions for the Awarding Body pursuant to Title 2, California Code of Regulations, section 18700-18702.4 and those employees and consultants will be required to file Statements of Economic Interest (EPPC Form 700 and to comply with other applicable requirements of the Political Reform Act in connection with work performed on behalf of the Awarding Body.

III. ANNUAL REPORTS (LCP-ARI - ADDENDUM B)

The SLOCPW shall submit to the Director of the Department of Industrial Relations (DIR) a Labor Compliance Program annual report on its operation by no later than August 31st of each year. The annual report shall cover the twelve month period commencing on July 1 of the preceding calendar year and ending on June 30th of the year in which the report is due.

The annual report shall be made on the LCP-ARI form and the information in the report shall be sufficient detail to afford a basis for evaluating the scope of and level of enforcement activity of the Labor Compliance Program. The annual report shall also include such additional information as the Labor Compliance Program may be required to report as a condition of its approval.

IV. REPORTS AND AUDITS (AUDIT RECORD WORKSHEETS, PUBLIC WORKS INVESTIGATIVE WORKSHEET, PUBLIC WORKS AUDIT WORKSHEET AND PREVAILING WAGE DETERMINATION SUMMARY - ADDENDUM C)

The primary function of the Labor Compliance Program is to ensure that public works contractors comply with the prevailing wage requirements found in the Public Works Chapter of the State Labor Code. Payroll records furnished by contractors and subcontractors in accordance with section 16421 (a) (3) of the California Code of Regulations and Labor Code section 1776 shall be reviewed by the Labor Compliance Program as promptly and as practicable after receipt of the records but in no event more than 30 days after such receipt. Payroll records will be reviewed for proper classifications, wage rates and other consideration in compliance with Labor Code section 1776 (b) and that the correct prevailing wage rates have been reported as paid for each classification of labor listed and with confirmation of payment.

"Confirmation" of payroll records furnished by contractors and subcontractors shall be defined as an independent corroboration of reported prevailing wage payments. Confirmation may be accomplished through worker interviews, examination of paychecks or paycheck stubs, direct confirmation of payments from third party recipients of "Employer Payments" (as defined at section 16000 of Title 8 of the California Code of Regulations), or any other reasonable method of corroboration. For each month in which a contractor or subcontractor reports having workers employed on the public work, confirmation of furnished payroll records shall be undertaken randomly for at least one worker for at least one weekly period within that month. Confirmation shall also be undertaken whenever complaints from workers or other interested persons or other circumstances or information reasonably suggest to the Labor Compliance Program that payroll records furnished by a contractor or subcontractor are inaccurate.

Representatives of the Labor Compliance Program shall conduct in-person inspections at the site or sites at which the contract for public work is being performed ("On-Site Visits"). On-Site Visits may be undertaken randomly or as deemed necessary by the Labor Compliance Program, but shall be undertaken during each week that workers are present at sites at which the contract for public work is being performed. All On-Site Visits shall include visual inspection of (1) the copy of the determination(s) of the Director of Industrial Relations of the prevailing wage rate of per diem wages required to be posted at each job site in compliance with Labor Code Section 1773.2, and (2) the Notice of Labor Compliance Program Approval required to be posted at the

job site in accordance with section 16429 above, listing a telephone number to call for inquiries, questions, or assistance with regard to the Labor Compliance Program. On-Site Visits may include other activities deemed necessary by the Labor Compliance Program to independently corroborate prevailing wage payments reported on payroll records furnished by contractors and subcontractors.

An Audit, as defined herein, shall be prepared by the Labor Compliance Program whenever the Labor Compliance Program has determined that there has been a violation of the Public Works Chapter of the Labor Code resulting in the underpayment of wages. An "Audit" for this purpose shall be defined as a written summary reflecting prevailing wage deficiencies for each underpaid worker, and including any penalties to be assessed under Labor Code Sections 1775 and 1813, as determined by the Labor Compliance Program after consideration of the best information available as to actual hours worked, amounts paid, and classifications of workers employed in connection with the public work. Such available information may include, but is not limited to, worker interviews, complaints from workers or other interested persons, all time cards, cancelled checks, cash receipts, trust fund forms, books, documents, schedules, forms, reports, receipts or other evidences which reflect job assignments, work schedules by days and hours, and the disbursement by way of cash, check, or in whatever form or manner, of funds to a person(s) by job classification and/or skill pursuant to a public works project. An Audit is sufficiently detailed when it enables the Labor Commissioner, if requested to determine the amount of forfeiture under section 16437, to draw reasonable conclusions as to compliance with the requirements of the Public Works Chapter of the Labor Code, and to enable accurate computation of underpayments of wages to workers and of applicable penalties and forfeitures. An Audit using the forms in Addendum C, when accompanied by a brief narrative identifying the Bid Advertisement Date of the contract for public work and summarizing the nature of the violation and the basis upon which the determination of underpayment was made, presumptively demonstrates sufficiency. Records supporting an Audit shall be maintained by the Labor Compliance Program to satisfy its burden of coming forward with evidence in administrative review proceedings under Labor Code Section 1742 and the Prevailing Wage Hearing Regulations found at sections 17201-17270 of Title 8 of the California Code of Regulations.

After the Labor Compliance Program has determined that violations of the prevailing wage laws have resulted in the underpayment of wages and an audit has been prepared, notification shall be provided to the contractor and affected subcontractor of an opportunity to resolve the wage deficiency prior to a determination of the amount of forfeiture by the Labor Commissioner pursuant to these regulations. The contractor and affected subcontractor shall be provided at least 10 days following such notification to submit exculpatory information consistent with the "good faith mistake" factors set forth in Labor Code Section 1775(a)(2)(A)(i) and (ii). If, based upon the contractor's submission, the Labor Compliance Program reasonably concludes that the failure to pay the correct wages was a good faith mistake, and has no knowledge that the contractor and affected subcontractor have a prior record of failing to meet their prevailing wage obligations, the Labor Compliance Program shall not be required to request the Labor Commissioner for a determination of the amount of penalties to be assessed under Labor Code Section 1775 if the underpayment of wages to workers is promptly corrected and proof of such payment is submitted to the Labor Compliance Program. For each instance in which a wage deficiency is resolved in accordance with this regulation, the Labor Compliance Program shall maintain a written record

of the failure of the contractor or subcontractor to meet its prevailing wage obligation. The record shall identify the public works project, the contractor or affected subcontractor involved, and the gross amount of wages paid to workers to resolve the prevailing wage deficiency; and the record shall also include a copy of the Audit prepared pursuant to subpart (e) above along with any exculpatory information submitted to the Labor Compliance Program by the affected contractor or subcontractor.

V. DUTIES OF LABOR COMPLIANCE PROGRAM (SUGGESTED SINGLE PROJECT LABOR COMPLIANCE REVIEW AND ENFORCEMENT REPORT FORM - ADDENDUM D)

The SLOCPW'S Labor Compliance Program shall have a duty to the Director to enforce the requirements of Chapter 1 of Part 7 of Division 2 of the Labor Code and these regulations in a manner consistent with the practice of the Labor Commissioner. It is the practice of the Labor Commissioner to refer to the Director's ongoing advisory service of web-posted public works coverage determinations as a source of information and guidance in making enforcement decisions. It is also the practice of the Labor Commissioner to be represented by an attorney in prevailing wage hearings conducted pursuant to Labor Code Section 1742(b) and sections 17201-17270 of Title 8 of the California Code of Regulations.

Upon receipt of a written complaint 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.

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

(1) Either the Awarding Body or the Labor Compliance Program acting on its behalf shall (A) inform contractors and subcontractors bidding public works about apprenticeship requirements,

(B) send copies of awards and notices of discrepancies to the Division of Apprenticeship Standards as required under Section 1773.3 of the Labor Code, and (C) refer complaints and promptly report suspected violations of apprenticeship requirements to the Division of Apprenticeship Standards.

(2) The Labor Compliance Program shall be responsible for enforcing prevailing wage pay requirements for apprentices consistent with the practice of the Labor Commissioner, including (A) that any contributions required pursuant to Labor Code Section 1777.5(m) are paid to the appropriate entity, (B) that apprentices are paid no less than the prevailing apprentice rate, (C) that workers listed and paid as apprentices on the certified payroll records are duly registered as apprentices with the Division of Apprenticeship Standards, and (D) requiring that the regular prevailing wage rate be paid (i) to any worker who is not a duly registered apprentice and (ii) for all hours in excess of the maximum ratio permitted under Labor Code Section 1777.5(g), as determined at the conclusion of the employing contractor or subcontractor's work on the public works contract.

(d) For each public work project subject to a Labor Compliance Program's enforcement of prevailing wage requirements, a separate, written summary of labor compliance activities and relevant facts pertaining to that particular project shall be maintained. That summary shall demonstrate that reasonable and sufficient efforts have been made to enforce prevailing wage requirements consistent with the practice of the Labor Commissioner. Appendix C (Addendum D in Manual) following this section provides a suggested format for tracking and monitoring enforcement activities. Compliance records for a project shall be retained until the later of (1) at least one year after the acceptance of the public work or five years after the cessation of all labor on a public work that has not been accepted, or (2) one year after a final decision or judgment in any litigation under Labor Code Section 1742. For purposes of this section, a written summary or report includes information maintained electronically, provided that the summary or report can be printed out in hard copy form or is in an electronic format that (1) can be transmitted by e-mail or compact disk and (2) would be acceptable for the filing of documents in a federal or state court of record within this state.

(e) The Labor Commissioner may provide, sponsor, or endorse training on how to enforce prevailing wage requirements, including but not necessarily limited to the subjects of (1) ascertaining prevailing wage requirements and rates from the Division of Labor Statistics and Research, (2) monitoring and investigation under section 16432 above, (3) enforcement responsibilities under this section and sections 16435-16439 below, and (4) procedural requirements and responsibilities as an enforcing agency under Labor Code sections 1741-1743 and 1771.6 and sections 17201-17270 of Title 8 of the California Code of Regulations.

VI. WITHHOLDING CONTRACT PAYMENTS WHEN PAYROLL RECORDS ARE DELINQUENT OR INADEQUATE (ADDENDUM H)

Definitions:

(a) "Withhold" means to cease payments by the Awarding Body, or others who pay on its behalf, or agents, to the general contractor. Where the violation is by a subcontractor, the general

contractor shall be notified of the nature of the violation and reference made to its rights under Labor Code Section 1729.

(b) "Contracts." Except as otherwise provided by agreement, only contracts under a single master contract, including a Design-Build contract, or contracts entered into as stages of a single project, may be the subject of withholding.

(c) "Delinquent payroll records" means those not submitted on the date set in the contract.

(d) "Inadequate payroll records" are any one of the following:

(1) A record lacking any of the information required by Labor Code Section 1776;

(2) A record which contains all of the required information but is not certified, or is certified by someone who is not an agent of the contractor or subcontractor;

(3) A record remaining uncorrected for one payroll period, after the Labor Compliance Program has given the contractor or subcontractor notice of inaccuracies detected by audit or record review. However prompt correction will stop any duty to withhold if such inaccuracies do not amount to 1 percent of the entire Certified Weekly Payroll in dollar value and do not affect more than half the persons listed as workers employed on that Certified Weekly Payroll, as defined in Labor Code Section 1776 and section 16401 of Title 8 of the California Code of Regulations.

(e) The withholding of contract payments when payroll records are delinquent or inadequate is required by Labor Code Section 1771.5(b) (5), and it does not require the prior approval of the Labor Commissioner. The Awarding Body shall only withhold those payments due or estimated to be due to the contractor or subcontractor whose payroll records are delinquent or inadequate, plus any additional amount that the Labor Compliance Program has reasonable cause to believe may be needed to cover a back wage and penalty assessment against the contractor or subcontractor whose payroll records are delinquent or inadequate; provided that a contractor shall be required in turn to cease all payments to a subcontractor whose payroll records are delinquent or inadequate until the Labor Compliance Program provides notice that the subcontractor has cured the delinquency or deficiency.

(f) When contract payments are withheld under this section, the Labor Compliance Program shall provide the contractor and subcontractor, if applicable, with immediate written notice that includes all of the following: (1) a statement that payments are being withheld due to delinquent or inadequate payroll records, and that identifies what records are missing or states why records that have been submitted are deemed inadequate; (2) specifies the amount being withheld; and (3) informs the contractor or subcontractor of the right to request an expedited hearing to review the withholding of contract payments under Labor Code Section 1742, limited to the issue of whether the records are delinquent or inadequate or the Labor Compliance Program has exceeded its authority under this section.

(g) No contract payments shall be withheld solely on the basis of delinquent or inadequate payroll records after the required records have been produced.

(h) In addition to withholding contract payments based on delinquent or inadequate payroll records, penalties shall be assessed under Labor Code Section 1776(g) for failure to timely comply with a written request for certified payroll records. The assessment of penalties under Labor Code Section 1776(g) does require the prior approval of the Labor Commissioner under section 16436 of these regulations.

VII. WITHHOLDING CONTRACT PAYMENTS WHEN, AFTER INVESTIGATIONS, IT IS ESTABLISHED THAT UNDERPAYMENTS OR OTHER VIOLATIONS HAS OCCURRED (NOTICE TO WITHHOLD OF CONTRACT PAYMENTS) - ADDENDUM G

(a) "Withhold" and "contracts" have the same meaning set forth in sections 16435(a) and 16435(b) of these regulations.

(b) Where the violation is by a subcontractor, the general contractor shall be notified of the nature of the violation and reference made to its rights under Labor Code Section 1729.

(c) "Amount equal to the underpayment" is the total of the following determined by payroll review, audit, or admission of contractor or subcontractor:

1) The difference between amounts paid workers and the correct General Prevailing Rate of Per Diem Wages, as defined in Labor Code Section 1773, and determined to be the prevailing rate due workers in such craft, classification or trade in which they were employed and the amounts paid;

(2) The difference between amounts paid on behalf of workers and the correct amounts of Employer Payments, as defined in Labor Code Section 1773.1 and determined to be part of the prevailing rate costs of contractors due for employment of workers in such craft, classification or trade in which they were employed and the amounts paid;

(3) Estimated amounts of "illegal taking of wages";

(4) Amounts of apprenticeship training contributions paid to neither the program sponsor's training trust nor the California Apprenticeship Council;

(5) Estimated penalties under Labor Code Sections 1775, 1776, and 1813.

(d) The withholding of contract payments when, after investigation, it is established that underpayment or other violations have occurred requires the prior approval of the Labor Commissioner under sections 16436 and 16437 of these regulations.

**VIII. FORFEITURES REQUIRING APPROVAL BY THE LABOR COMMISSIONER
(REQUEST FOR APPROVAL OF FORFEITURE - SUGGESTED FORMAT -
ADDENDUM E)**

(a) For purposes of this section and section 16437 below, "forfeitures" means the amount of wages, penalties, and forfeitures assessed by the Labor Compliance Program and proposed to be withheld pursuant to Labor Code section 1771.6(a), and includes the following: (1) the difference between the prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate by the contractor or subcontractor; and (2) penalties assessed under Labor Code Sections 1775, 1776 and 1813.

(b) If the aggregate amount of forfeitures assessed as to a contractor or subcontractor is less than \$1000.00, the forfeitures shall be deemed approved by the Labor Commissioner upon service and the Labor Commissioner's receipt of copies of the following: (1) the Notice of Withholding of Contract Payments authorized by Labor Code Section 1771.6(a); (2) an Audit as defined in section 16432(e) of these regulations, and (3) a brief narrative identifying the Bid Advertisement Date of the contract for public work and summarizing the nature of the violation, the basis of the underpayment, and the factors considered in determining the assessment of penalties, if any, under Labor Code Section 1775.

(c) For all other forfeitures, approval by the Labor Commissioner shall be requested and obtained in accordance with section 16437 below.

IX. DETERMINATION OF AMOUNT OF FORFEITURE BY THE LABOR COMMISSIONER

(a) Where the Labor Compliance Program requests a determination of the amount of forfeiture, the request shall include a file or report to the Labor Commissioner which contains at least the information specified in subparts (1) through (9) below. Appendix D is a suggested format for a Request for Approval of Forfeiture under this section.

(1) Whether the public work has been accepted by the awarding body and whether a valid notice of completion has been filed, the dates if any when those events occurred, and the amount of funds being held in retention by the Awarding Body;

(2) Any other deadline which if missed would impede collection;

(3) Evidence of violation, in narrative form;

(4) Evidence of violation obtained under section 16432 of these regulations and a copy of the Audit prepared in accordance with section 16432(e) setting forth the amounts of unpaid wages and applicable penalties;

(5) Evidence that before the forfeiture was sent to the Labor Commissioner (A) the contractor and subcontractor were given the opportunity to explain why there was no violation, or that

any violation was caused by good faith mistake and promptly corrected when brought to the contractor or subcontractor's attention, and (B) the contractor and subcontractor either did not do so or failed to convince the Labor Compliance Program of its position;

(6) Where the Labor Compliance Program seeks not only wages but also a penalty as part of the forfeiture, and the contractor or subcontractor has unsuccessfully contended that the cause of violation was a good faith mistake that was promptly corrected when brought to the contractor or subcontractor's attention, a short statement should accompany the proposal for a forfeiture, with a recommended penalty amount pursuant to Labor Code Section 1775(a);

(7) Where the Labor Compliance Program seeks only wages or a penalty less than \$50 per day as part of the forfeiture because the contractor or subcontractor has successfully contended that the cause of the violation was a good faith mistake that was promptly corrected when brought to the contractor or subcontractor's attention, the file should include the evidence as to the contractor or subcontractor's knowledge of his or her obligation, including the program's communication to the contractor or subcontractor of the obligation in the bid invitations, at the prejob conference agenda and records, and any other notice given as part of the contracting process. With the file should be a statement, similar to that described in (6), and recommended penalty amounts, pursuant to Labor Code Section 1775(a);

(8) The previous record of the contractor and subcontractor in meeting their prevailing wage obligations; and

(9) Whether the Labor Compliance Program has been granted approval on only an interim or temporary basis under sections 16425 or 16426 above or whether it has been granted extended approval under section 16427 above.

(b) The file or report shall be served on the Labor Commissioner as soon as practicable after the violation has been discovered, and not less than 30 days before the final payment, but in no event not less than 30 days before the expiration of the limitations period set forth in Labor Code Section 1741.

(c) A copy of the recommended forfeiture and the file or report shall be served on the contractor and subcontractor at the same time as it is sent to the Labor Commissioner. The Labor Compliance Program may exclude from the documents served on the contractor and subcontractor copies of documents secured from the contractor or subcontractor during an audit, investigation, or meeting if those are clearly referenced in the file or report.

(d) The Labor Commissioner shall affirm, reject, or modify the forfeiture in whole or in part as to the wages and penalties due.

(e) The Labor Commissioner's determination of the forfeiture is effective on one of the two following dates:

(1) For all programs other than those having extended authority under section 16427 of these regulations, on the date the Labor Commissioner serves by first class mail, on the Labor Compliance Program, on the Awarding Body if different, on the contractor and on the subcontractor, if any, an endorsed copy of the proposed forfeiture, or a newly drafted forfeiture statement which sets out the amount of forfeiture approved. Service on the contractor or subcontractor is effective if made on the last address supplied by the contractor or subcontractor in the record. The Labor Commissioner's approval, modification or disapproval of the proposed forfeiture shall be served within 30 days of receipt of the proposed forfeiture.

(2) For programs with extended authority under section 16427 above, approval is effective 20 days after the requested forfeitures are served upon the Labor Commissioner, unless the Labor Commissioner serves a notice upon the parties, within that time period, that this forfeiture request is subject to further review. For such programs, a notice that approval will follow such a procedure will be included in the transmittal of the forfeiture request to the contractor. If the Labor Commissioner notifies the parties of a decision to undertake further review, the Labor Commissioner's final approval, modification or disapproval of the proposed forfeiture shall be served within 30 days of the date of notice of further review.

X. DEPOSITS OF PENALTIES AND FORFEITURES WITHHELD

When 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 Awarding Body.

When collection of fines, penalties or forfeitures results from administrative proceedings or court action to which the Labor Commissioner and Awarding Body 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 Awarding Body or its Labor Compliance Program is not a party, shall be deposited in the general fund of the state.

All wages and benefits which belong to an employee and are withheld or collected from a contractor or subcontractor, either by withholding or as a result of administrative proceedings or any court action, and which have not been paid to the employee or irrevocably committed on the employee's behalf to a benefit fund, shall be deposited with the Labor Commissioner who shall handle such wages and benefits in accordance with Labor Code section 96.7.

XI. REQUEST FOR REVIEW OF A LABOR COMPLIANCE PROGRAM ENFORCEMENT ACTION; SETTLEMENT AUTHORITY (NOTICE OF TRANSMITTAL AND NOTICE OF OPPORTUNITY TO REVIEW EVIDENCE PURSUANT TO LABOR CODE 1742 (b) (ADDENDUM F))

(a) A contractor or subcontractor may request a settlement meeting pursuant to Labor Code Section 1742.1(b) and may request review of a Labor Compliance Program enforcement action in accordance with Labor Code Sections 1771.6(b) and 1742 and the regulations found at sections 17201-17270 of Title 8 of the California Code of Regulations. The Labor Compliance Program shall have the rights and responsibilities of 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 serve notices, transmit the Request for Review to the hearing office, and provide an opportunity to review evidence in a timely manner, to participate through counsel in all hearing proceedings, and to meet the burden of establishing prima facie support for the Notice of Withholding of Contract Payments.

(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.

(c) Except in cases where the Labor Commissioner has intervened pursuant to subpart (b) above, 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 a Labor Compliance Program 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 Labor Compliance Program shall document the reasons for the settlement or request for dismissal and shall make that documentation available to the Labor Commissioner upon request.

XII. WITHHOLDING OF FUNDS FROM CONTRACTOR – HEARING PROCEDURE

Definitions.

As used in these regulations, the terms “awarding body,” “contractor,” and “subcontractor” shall have the same meaning as in Part 7 of Division 2 of the Labor Code. The term “affected subcontractor” shall mean a subcontractor whose alleged failure to pay the prevailing wage or to otherwise comply with the provisions of Labor Code 1720-1815 resulted in the withholding of funds pursuant to Labor Code 1727.

Notice to Contractor and Affected Subcontractor.

(a) Upon the decision to withhold, retain or forfeit any sum from a payment due to a contractor as permitted by Labor Code 1727, the Division of Labor Standards Enforcement shall give written notice to the awarding body, the contractor, and to any affected subcontractor, of the withholding, retention, or forfeiture.

(b) Said notice shall include the following information:

(1) The amount to be withheld, retained or forfeited.

(2) A short statement of the factual basis upon which said amount is to be withheld, retained, or forfeited, including, but not limited to, the computation of any wages found to be due, and the computation of any penalties assessed under Labor Code 1775.

(3) Notice of the right to request a hearing under these regulations, and of the manner in which, and the time within which a hearing must be requested.

(c) Said notice shall be sent by certified mail to the last known address of the contractor, and to the last known address of any affected subcontractor. The records of the State Contractors' License Board may be used to determine the address of a contractor or affected subcontractor.

Withholding, Retention, or Forfeiture.

(a) When notice has been sent as provided in section 16411, above, the awarding body shall proceed to withhold, retain, or forfeit the amount stated in the notice, pursuant to Labor Code 1727. Such withholding, retention, or forfeiture shall be subject to the right of a contractor or affected subcontractor to request a hearing, as provided in section 16413, below, and further subject to the right of a contractor or a contractor's assignee to bring suit against the awarding body as provided by Labor Code 1731-1733.

(b) Nothing in these regulations shall extend, or affect in any way, the statutory time limits provided by Labor Code 1731-1733.

Request for Hearing.

(a) A contractor or subcontractor desiring a hearing regarding the withholding, retention, or forfeiture of an amount may request such a hearing by letter postmarked within 30 days of the date of the mailing of the notice provided by section 16411, above, mailed to the awarding body, and to:

DIVISION OF LABOR STANDARDS ENFORCEMENT
LEGAL SECTION
455 GOLDEN GATE AVENUE, 9TH FLOOR
SAN FRANCISCO, CALIFORNIA 94102

(b) A request for hearing shall contain a statement of all factual and legal grounds upon which the withholding is contested, identifying the specific element or elements, issue or issues, being contested, including, but not limited to:

- (1) the classification of workers included in the computation of wages found to be due;
- (2) the hours worked by such workers;
- (3) the prevailing wage requirements applicable to such classifications;
- (4) the amounts paid to such workers;
- (5) the assessment and computation of statutory penalties;
- (6) any erroneous mathematical calculations.

Assertions of fact included in the statement shall be supported by documentary evidence, e.g., time cards, canceled checks, cash receipts, trust fund forms, books, documents, schedules, forms, reports, receipts or other evidence which reflect job assignments, work schedules by days and hours, and evidence of the disbursement by way of cash, check, or in whatever form or manner, of funds to a person or persons by job classification and/or skill, and, if appropriate, declarations under penalty of perjury.

Hearing

(a) Upon receipt of a timely request for a hearing, the Labor Commissioner, or his or her deputy or agent shall, within 30 days, hold a hearing to determine whether reasonable cause exists to withhold and retain the funds identified in the notice provided under section 16411, above.

(b) The hearing date may be continued at the request of the party seeking the hearing upon a showing of good cause.

(c) The burden of proof at such hearing shall be as provided in Labor Code § 1733.

(d) Within 15 days after the conclusion of the Hearing the Hearing Officer shall issue a decision which affirms, modifies or dismisses the Notice to Withhold. This decision shall consist of a notice of findings, findings, and an order which shall be served on the awarding body and on all parties to the hearing by first class mail at the last known address of the parties on file with the Labor Commissioner. The awarding body shall promptly abide by any decision of the Labor Commissioner with respect to the notice to withhold.

(e) The hearing pursuant to this section shall only determine whether reasonable cause exists for the withholding, retention, or forfeiture of funds pursuant to Labor Code § 1727. A hearing pursuant to this section shall not be deemed to be dispositive as to the contractor's (or affected subcontractor's) compliance with prevailing wage laws. Any decision rendered shall have no res judicata or collateral estoppel effect, and will not preclude the Labor Commissioner from

pursuing any action provided by Labor Code § 1775 or any other statutory or common law remedy against any party. Neither the failure of a party to request a hearing nor the Labor Commissioner's decision after a hearing shall preclude the contractor or affected subcontractor from pursuing any other remedy provided by existing law.

XIII. REQUEST FOR PAYROLL RECORDS

(a) Requests may be made by any person for certified copies of payroll records. Requests shall be made to any of the following:

- (1) the body awarding the contract, or
- (2) any office of the Division of Labor Standards Enforcement, or the Division of Apprenticeship Standards.

(b) Requests for certified copies of payroll records pursuant to Section 1776 of the Labor Code may be made by any person. However, any such request shall be in writing and contain at least the following information:

- (1) The body awarding the contract;
- (2) The contract number and/or description;
- (3) The particular job location if more than one;
- (4) The name of the contractor;
- (5) The regular business address, if known.

NOTE: Requests for records of more than one contractor or subcontractor must list the information regarding that contractor individually, even if all requests pertain to the same particular public works project. Blanket requests covering an entire public works project will not be accepted; unless contractor and subcontractor responsibilities regarding the project are not clearly defined.

(c) Acknowledgment of Request. The public entity receiving a request for payroll records shall acknowledge receipt of such, and indicate the cost of providing the payroll records based on an estimate by the contractor, subcontractor or public entity. The acknowledgment of the receipt of said request for payroll records may be accomplished by the public entity's furnishing a copy of its written correspondence requesting certified copies of the payroll records sent to the specific contractor pursuant to Section 16400(d) below, to the person who requested said records.

(d) Request to Contractor. The request for copies of payroll records by the requesting public entity shall be in any form and/or method which will assure and evidence receipt thereof. The request shall include the following:

(1) Specify the records to be provided and the form upon which the information is to be provided;

(2) Conspicuous notice of the following:

(A) that the person certifying the copies of the payroll records is, if not the contractor, considered as an agent acting on behalf of the contractor; and

(B) that failure to provide certified copies of the records to the requesting public entity within 10 working days of the receipt of the request will subject the contractor to a penalty of twenty-five (\$25.00) dollars per calendar day or portion thereof for each worker until strict compliance is effectuated;

(3) Cost of preparation as provided in Section 16402; and

(4) Provide for inspection.

(e) Inspection of Payroll Records. Inspection of the original payroll records at the office of the contractor(s) pursuant to subdivision (b) of Section 1776 of the Labor Code shall be limited to the public entities upon reasonable written or oral notice.

XIV. REPORTING OF PAYROLL REQUEST

(a) Reporting Format. The format for reporting of payroll records requested pursuant to Labor Code Section 1776 shall be on a form provided by the public entity. Copies of the forms may be procured at any office of the Division of Labor Standards Enforcement (DLSE) throughout the state and/or:

Division of Labor Statistics & Research P.O. Box 420603 San Francisco, CA 94101

ATTENTION: Prevailing Wage Unit

Acceptance of any other format shall be conditioned upon the requirement that the alternate format contain all of the information required pursuant to Labor Code Section 1776. If, however, the contractor does not comply with the provisions of Labor Code Section 1776, the Labor Commissioner may require the use of DIR's suggested format, "Public Works Payroll Reporting Form" (Form A-1-131).

(b) Words of Certification. The form of certification shall be as follows: I, _____ (Name-print) the undersigned, am _____ (position in business) with the authority to act for and on behalf of _____, (name of business and/or contractor) certify under penalty of perjury that the records or copies thereof submitted and consisting of _____ (description, no. of pages) are the originals or true, full and correct copies of the originals which depict the payroll record(s) of the actual disbursements by way of cash, check, or whatever form to the individual or individuals named. Date: _____ Signature: _____

A public entity may require a more strict and/or more extensive form of certification.

XV. COST OF PREPARATION

The cost of preparation to each contractor, subcontractor, or public entity when the request was made shall be provided in advance by the person seeking the payroll record. Such cost shall be \$1 for the first page of the payroll record and 25 cents for each page thereafter, plus \$10 to the contractor or subcontractor for handling costs. Payment in the form of cash, check or certified money order shall be made prior to release of the documents to cover the actual costs of preparation.

XVI. PRIVACY CONSIDERATION

(a) When notice has been sent as provided in section 16411, above, the awarding body shall proceed to withhold, retain, or forfeit the amount stated in the notice, pursuant to Labor Code § 1727. Such withholding, retention, or forfeiture shall be subject to the right of a contractor or affected subcontractor to request a hearing, as provided in section 16413, below, and further subject to the right of a contractor or a contractor's assignee to bring suit against the awarding body as provided by Labor Code §§ 1731-1733.

(b) Nothing in these regulations shall extend, or affect in any way, the statutory time limits provided by Labor Code §§ 1731-1733.

XVII. USE OF ELECTRONIC REPORTING FORMS

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);

(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, a Labor Compliance Program, 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.

XVIII. INQUIRIES

All questions regarding this manual and all matters concerning the payment of prevailing wages should be referred to:

Dave O'Halloran
San Luis Obispo County Public Works
County Government Center, Room 206
San Luis Obispo, CA 93408
(805) 781-5252

For more information, log on to:
<http://www.dir.ca.gov>

FPPC FORM 700-ADDENDUM A

**STATEMENT OF ECONOMIC INTERESTS
 COVER PAGE**

Date Received
Official Use Only

Please type or print in ink.

NAME OF FILER (LAST) (FIRST) (MIDDLE)

1. Office, Agency, or Court

Agency Name _____

Division, Board, Department, District, if applicable _____

Your Position _____

► If filing for multiple positions, list below or on an attachment.

Agency: _____

Position: _____

2. Jurisdiction of Office (Check at least one box)

State

Judge (Statewide Jurisdiction)

Multi-County _____

County of _____

City of _____

Other _____

3. Type of Statement (Check at least one box)

Annual: The period covered is January 1, 2010, through December 31, 2010.

Leaving Office: Date Left ____/____/____
 (Check one)

-or-
 The period covered is ____/____/____, through December 31, 2010.

The period covered is January 1, 2010, through the date of leaving office.

Assuming Office: Date ____/____/____

The period covered is ____/____/____, through the date of leaving office.

Candidate: Election Year _____ Office sought, if different than Part 1: _____

4. Schedule Summary

Check applicable schedules or "None."

► Total number of pages including this cover page: _____

Schedule A-1 - Investments – schedule attached

Schedule C - Income, Loans, & Business Positions – schedule attached

Schedule A-2 - Investments – schedule attached

Schedule D - Income – Gifts – schedule attached

Schedule B - Real Property – schedule attached

Schedule E - Income – Gifts – Travel Payments – schedule attached

-or-

None - No reportable interests on any schedule

5. Verification

MAILING ADDRESS STREET CITY STATE ZIP CODE
(Business or Agency Address Recommended - Public Document)

DAYTIME TELEPHONE NUMBER () E-MAIL ADDRESS

I have used all reasonable diligence in preparing this statement. I have reviewed this statement and to the best of my knowledge the information contained herein and in any attached schedules is true and complete. I acknowledge this is a public document.

I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date Signed _____
(month, day, year)

Signature _____
(File the originally signed statement with your filing official.)

LCP-ARI-ADDENDUM B

LCP-ARI

C. For any amount identified in item B for which approval of forfeiture not requested from the Labor Commissioner, please explain below.

Project Name	Amount Assessed	Amount Recovered	Explanation
Total			

D. For any amount identified in item B for which approval of forfeiture was requested from the Labor Commissioner, please provide the following:

Project Name	Amount Assessed				Wages	Total	Amount Recovered			Wages	Total
	LC § 1776(g)	LC § 1775	LC § 1813	LC § 1776(g)			LC § 1775	LC § 1813			
Total											

E. Identify cases that are or were the subject of LC § 1742 proceedings:

Project Name	Contractor	Nature of Violation	ODL Case #	Current Status

F. Did you refer any contractor to the Labor Commissioner for debarment per LC § 1777.1?

Please check one: Yes No
 If yes, identify affected contractor(s) or subcontractor(s) and date(s) of referral: _____

G. Did you refer any apprenticeship violation to the Division of Apprenticeship Standards (DAS)?

Please check one: Yes No
 If yes, identify affected contractor(s) or subcontractor(s) and date(s) of referral: _____

AUDIT RECORD WORKSHEETS, PUBLIC
WORKS INVESTIGATIVE WORKSHEET,
PUBLIC WORKS AUDIT WORKSHEET
AND PREVAILING WAGE
DETERMINATION SUMMARY-

ADDENDUM C

PREVAILING WAGE DETERMINATION SUMMARY

CODE NO.	CLASSIFICATION	Effective Date	HOURLY RATE	Contributors	TRAINING TIME 1/2	HOLIDAY / SUNDAY	TRAVEL & SUBSISTENCE	Other Hourly Requirements
1								
2								
3								
4								
5								
6								
7								
8								
9								
10								
11								
12								

WAGE DETERMINATION INFORMATION

CODE NO.	CLASSIFICATION	WAGE DETERMINATION NO.
1		
2		
3		
4		
5		
6		
7		
8		
9		
10		
11		
12		

REVIEW AND ENFORCEMENT REPORT
FORM-ADDENDUM D

Suggested Single Project Labor Compliance Review and Enforcement Report Form

[Appendix C following 8 CCR §16434]

Awarding Body: _____

Project Name: _____

Name of Approved Labor Compliance Program: _____

Bid Advertisement Date: _____

Acceptance Date: _____

Notice of Completion Recordation Date: _____

Summary of Labor Compliance Activities

1. Contract Documents Containing Prevailing Wage Requirements (Identify)

2. Prejob Conference(s) -- Attach list(s) of attendees and dates

3. Notification to Project Workers of Labor Compliance Program's Contact Person. (Explain Manner of Notification for each project work site.)

4. Certified Payroll Record Review

- a. CPRs Received From:

Contractor/Subcontractor

For weeks ending ("w/e") through w/e

_____	_____
_____	_____
_____	_____
_____	_____

b. Classifications identified in CPRs and applicable Prevailing Wage Determinations

<u>Classification</u>	<u>Determination No.</u>
_____	_____
_____	_____
_____	_____
_____	_____

5. Further investigation or audit due to CPR review, information or complaint from worker or other interested person, or other reason:

a. Independent Confirmation of CPR Data

<u>Contractor/Subcontractor</u>	<u>Worker Interviews (Yes/No)</u>	<u>Reconciled CPRs with Paychecks or Stubs (Yes/No)</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

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

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

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

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

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

<u>Contractor/Subcontractor</u>	<u>Additional amounts Paid to Workers</u>	<u>Additional Training Fund</u>	<u>Explanation</u>
_____	_____	_____	*
_____	_____	_____	*
_____	_____	_____	*
_____	_____	_____	*

* Use separate page(s) for explanation

6. Complaints Received Alleging Noncompliance with Prevailing Wage Requirements.

<u>Name of Complainant</u>	<u>Date Received</u>	<u>Resolution or Current Status</u>
_____	_____	*
_____	_____	*
_____	_____	*
_____	_____	*

*Use separate page(s) to explain resolution or current status

7. Requests for Approval of Forfeiture to Labor Commissioner

<u>Contractor/Subcontractor</u>	<u>Date of Request</u>	<u>Approved/Modified/Denied</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____

8. Litigation Pending Under Labor Code Section 1742

<u>Contractor/Subcontractor</u>	<u>DIR Case Number</u>
_____	_____
_____	_____
_____	_____

9. (Check one): _____ Final report this project _____ Annual report this project

Authorized Representative for Labor Compliance Program

REQUEST FOR APPROVAL OF
FORFEITURE –SUGGESTED FORMAT

ADDENDUM E

Labor Compliance Program Regulations – APPENDIX D

REQUEST FOR APPROVAL OF FORFEITURE -- Suggested format

1. AWARDING BODY / THIRD PARTY LCP:

Name and Contact Information:	Date of Request:
Name and Contact Information for Awarding Body if different from LCP:	LCP Approval Status (specify if either interim or temporary or if LCP has extended authority):

2. PROJECT INFORMATION:

Project Name:	Contract Number:
Project Location:	
Bid Advertisement Dates:	Estimated Date Project is to be completed:
Acceptance Date of Project by the Awarding Body:	Notice of Completion/Date Recorded with County Recorder:
Other Relevant Deadline (specify):	Amount being held in Retention:

3. CONTRACTOR INFORMATION:

Name and address of Affected Contractor:	Name and address of Affected Subcontractor:
General Description of Scope of Work of the Entire Project:	
General Description of Scope of Work covered in the proposed Forfeiture (describe and attach relevant portions of contract or subcontract):	

4. LABOR COMPLIANCE PROGRAM INVESTIGATION AND FINDINGS:

Total Amount of Request for Notice of Withholding of Contract Payments:			
Wages Due:	Training Funds Due:	Total Penalties Due:	Potential Liquidated Damages [Wages + Training Funds]:
LC 1775 Penalties Due:	LC 1813 Penalties Due:	LC 1776 Penalties Due:	Other:

[Provide narrative summaries covering the following]:

- A. *Statement of Issues.*
- B. *Investigative Report (detailed narrative including but not limited to how the investigation was conducted including worker declarations, reviewing certified payroll records, verification of employer payment contributions, etc.).*
- C. *Audit Report (detailed explanation of how audit was completed addressing each of the issues above).*
- D. *Affected contractor and subcontractor information (how affected contractor and subcontractor were informed of potential violations; summary of their response with respect to violations and penalty issues; and any other information considered in determining recommended penalties).*
- E. *Recommended penalties under Labor Code Section 1775(a) and basis for recommendation, including how factors in subsection (a)(2) of Section 1775 were applied to arrive at the recommended amount(s).*

ATTACHMENTS

- 1. Audit Summary (Appendix B)
- 2. 1st Bid Advertisement Publication
- 3. Notice of Completion
- 4. Scope of Work
- 5. Complaint form(s) and Declarations, if any

Send the Request and all Attachments to:

Division of Labor Standards Enforcement
 Bureau of Field Enforcement
 Attn.: Regional Manager
 300 OceanGate Blvd., No. 850
 Long Beach, CA 90802

COPIES OF THIS REQUEST, INCLUDING ALL ATTACHMENTS, SHALL BE SERVED ON THE AFFECTED CONTRACTOR AND AFFECTED SUBCONTRACTOR AT THE SAME TIME THAT IT IS SENT TO THE DIVISION OF LABOR STANDARDS ENFORCEMENT.

NOTICE OF TRANSMITTAL AND NOTICE OF
OPPORTUNITY TO REVIEW EVIDENCE
PURSUANT TO LABOR CODE SECTION 1742
(b) – ADDENDUM F

LABOR COMPLIANCE PROGRAM <hr/> Review Office - Notice of Withholding of Contract Payments <hr/> <hr/> Phone: 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

LABOR COMPLIANCE PROGRAM

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.

<p>LABOR COMPLIANCE PROGRAM</p> <hr/> <p>Review Office - Notice of Withholding of Contract Payments</p> <hr/> <hr/> <hr/> <p>Phone: Fax:</p>	<p>(SEAL)</p>
<p>Date:</p>	<p>In Reply Refer to Case No.:</p>

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 Program at the hearing on the Request for Review.

Phone No.: _____
Fax No.: _____

NOTICE TO WITHHOLD CONTRACT
PAYMENTS - ADDENDUM G

1

Labor Compliance Program <hr/> <hr/> <hr/> <hr/> Phone: 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 _____ (Awarding Body) 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 Program has determined that the amount of penalties assessed under Labor Code section 1776 is: \$ _____

LABOR COMPLIANCE PROGRAM

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 (NWCP) 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:**

Labor Compliance Program

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 (c), 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 this 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 (a), 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 this 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 this Notice to be an error, the Director shall waive payment of the liquidated damages.

Notwithstanding the above, in accordance with Labor Code 1742.1 (b), there shall be no liability for liquidated damages if the full amount found due in this Notice, including penalties, has been deposited with the Department of Industrial Relations, within 60 days following service of this Notice, for the Department to hold in escrow pending administrative and judicial review. The Department shall release such funds, plus any interest earned, at the conclusion of all administrative and judicial review to the persons and entities who are found to be entitled to such funds.

In lieu of a cash deposit, the contractor may post an undertaking with the Department in full amount of the Notice of Withholding of Contract Payments. The undertaking shall be on the condition that, if any decision is issued by the Director upholding this Notice in any respect, the contractor shall pay the amount owed pursuant to a decision that is final under Labor Code Section 1742, unless the parties have executed a settlement agreement for the payment of some other amount, in which case the contractor shall pay the

amount that the contractor is obligated to pay under the terms of the settlement agreement. The undertaking must provide that if the contractor fails to pay the amount owed within 10 days of the date the decision is final or the execution of the settlement agreement, a portion of the undertaking equal to the amount owed, or the entire undertaking if the amount exceeds the undertaking is forfeited to the Labor Commissioner for the State of California for the purpose of satisfying the amounts owed under this Notice. A payment bond obtained by a contractor for the public works project which is the subject to this Notice shall not be accepted as an undertaking unless the following two conditions are completely satisfied: (1) the payment bond provides the payment of the full amount of this Notice, including but not limited to, all wages, training, trust contributions, and penalties, and (2) the conditions of payment set forth above are expressly agreed to by the affected contractor(s) and the surety which issued the payment bond. The undertaking should be forwarded to the Department as directed below. The Department's Accounting Office will hold the undertaking until the administrative and judicial review is completed. The disbursement of the bond funds will follow the same process as described above for a cash deposit.

Deposits must be made by check or money order payable to the Department of Industrial Relations with a letter and a copy of the Notice of Withhold Contract Payments and mailed to:

Department of Industrial Relations
Attention Cashiering Unit
P.O. Box 420603
San Francisco, CA 94142

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

Distribution:

Prime Contractor
Subcontractor
Surety(s) on Bond

Attach:

Audit Summary
Proof of Service

NOTICE OF TEMPORARY WITHHOLDING OF
CONTRACT PAMENTS DUE TO DELINQUENT
OR INADEQUATE PAYROLL RECORDS -
ADDENDUM H

[Name and Contact Information for person issuing Notice]	
Date:	Case or Contract No.:

NOTICE OF TEMPORARY WITHHOLDING OF CONTRACT PAYMENTS DUE TO DELINQUENT OR INADEQUATE PAYROLL RECORDS (8 CCR §16435)

Awarding Body:	Work performed in County of:
Project Name and Number (if any):	
Prime Contractor:	
Subcontractor:	

Pursuant to Labor Code §1771.5(b)(5) and 8 CCR §16435, contract payments are being withheld due to delinquent or inadequate payroll records.

Contractor or subcontractor whose payroll records are delinquent or inadequate:

The following payroll records are delinquent (specify weeks and due dates):

The following payroll records are inadequate (specify weeks and ways in which records are deemed inadequate under 8 CCR §16435(d)):

Estimated amount of contract payments due to contractor or subcontractor that are being withheld pursuant to this Notice:

See page 2 for additional information, including appeal rights.

 Labor Compliance Officer

Prime Contractor Obligations: If contract payments are being withheld due to the delinquency or inadequacy of your subcontractor's payroll records, you are required to cease all payments to that subcontractor until the Labor Compliance Program provides notice that the subcontractor has cured the delinquency or deficiency.

Notice of Right to Obtain Review – Expedited Hearing

An affected contractor or subcontractor may request review an expedited hearing to review this Notice of Withholding of Contract Payments under Labor Code §1742. *The only issue in any such review proceeding is whether the specified payroll records are in fact delinquent or inadequate within the meaning of 8 CCR §16435 or whether the Labor Compliance Program has exceeded its authority under 8 CCR §16435. To obtain an expedited hearing, a written request must be transmitted to the both the Labor Compliance Program and to the Lead Hearing Officer for the Director of the Department of Industrial Relations, as follows:*

[Name of Labor Compliance Officer,
address, and fax number]

Office of the Director – Legal Unit
Attention: Lead Hearing Officer
Expedited Hearing Request
Fax to: (415) 703-4277

The request for expedited hearing should specify the basis for challenging this Notice and include a copy of this Notice as an attachment. The request should also identify and provide contact information for the person who will represent the contractor or subcontractor at the hearing.

Important Additional Information: This is a Notice of Temporary Withholding of Contract Payments for Delinquent or Inadequate Payroll Records *only*. This is *not* a determination of liability for wages or penalties under Labor Code §§1775 and 1776 or any other statute. *Contract payments cannot continue to be withheld pursuant to this notice, once the required records have been produced.* However, the contractor and subcontractor may still be subject to the assessment of back wages and penalties and the withholding of contract payments if, upon investigation, a determination is made that the contractor or subcontractor violated the public works requirements of the Labor Code.

This Notice only addresses rights and responsibilities under state law. Awarding bodies, labor compliance programs, and contractors may have other rights or responsibilities under federal or local law, where applicable, and may also have additional rights or remedies under the public works contract.

§16435. Withholding Contract Payments When Payroll Records are Delinquent or Inadequate.

(a) "Withhold" means to cease payments by the Awarding Body, or others who pay on its behalf, or agents, to the general contractor. Where the violation is by a subcontractor, the general contractor shall be notified of the nature of the violation and reference made to its rights under Labor Code Section 1729.

(b) "Contracts." Except as otherwise provided by agreement, only contracts under a single master contract, including a Design-Build contract, or contracts entered into as stages of a single project, may be the subject of withholding.

(c) "Delinquent payroll records" means those not submitted on the date set in the contract.

(d) "Inadequate payroll records" are any one of the following:

(1) A record lacking any of the information required by Labor Code Section 1776;

(2) A record which contains all of the required information but is not certified, or is certified by someone who is not an agent of the contractor or subcontractor;

(3) A record remaining uncorrected for one payroll period after the Labor Compliance Program has given the contractor or subcontractor notice of inaccuracies detected by audit or record review. However, prompt correction will stop any duty to withhold if such inaccuracies do not amount to one (1) percent of the entire Certified Weekly Payroll in dollar value and do not affect more than half the persons listed as workers employed on that Certified Weekly Payroll, as defined in Labor Code Section 1776 and section 16401 of Title 8 of the California Code of Regulations.

(e) The withholding of contract payments when payroll records are delinquent or inadequate is required by Labor Code Section 1771.5(b)(5), and it does not require the prior approval of the Labor Commissioner. The Awarding Body shall only withhold those payments due or estimated to be due to the contractor or subcontractor whose payroll records are delinquent or inadequate, plus any additional amount that the Labor Compliance Program has reasonable cause to believe may be needed to cover a back wage and penalty assessment against the contractor or subcontractor whose payroll records are delinquent or inadequate; *provided that* a contractor shall be required in turn to cease all payments to a subcontractor whose payroll records are delinquent or inadequate until the Labor Compliance Program provides notice that the subcontractor has cured the delinquency or deficiency.

(f) When contract payments are withheld under this section, the Labor Compliance Program shall provide the contractor and subcontractor, if applicable, with immediate written notice that includes all of the following: (1) a statement that payments are being withheld due to delinquent or inadequate payroll records, and that identifies what records are missing or states why records that have been submitted are deemed inadequate; (2) specifies the amount being withheld; and (3) informs the contractor or subcontractor of the right to request an expedited hearing to review the withholding of contract payments under Labor Code Section 1742, limited to the issue of whether the records are delinquent or inadequate or the Labor Compliance Program has exceeded its authority under this section.

(g) No contract payments shall be withheld solely on the basis of delinquent or inadequate payroll records after the required records have been produced.

(h) In addition to withholding contract payments based on delinquent or inadequate payroll records, penalties shall be assessed under Labor Code Section 1776(g) for failure to timely comply with a written request for certified payroll records. The assessment of penalties under Labor Code Section 1776(g) does require the prior approval of the Labor Commissioner under section 16436 of these regulations.

DAS FORMS - ADDENDUM I

PUBLIC WORKS CONTRACT AWARD INFORMATION

Contract award information must be sent to your Apprenticeship Committee if you are approved to train. If you are not approved to train, you must send the information (which may be this form) to ALL applicable Apprenticeship Committees in your craft or trade in the area of the site of the public work. Go to: <http://www.dir.ca.gov/das/PublicWorksForms.htm> for information about programs in your area and trade. You may also consult your local Division of Apprenticeship Standards (DAS) office whose telephone number may be found in your local directory under California, State of, Industrial Relations, Division of Apprenticeship Standards.

Do not send this form to the Division of Apprenticeship Standards.

NAME OF YOUR COMPANY	CONTRACTOR'S STATE LICENSE NO
MAILING ADDRESS- NUMBER & STREET, CITY, ZIP CODE	AREA CODE & TELEPHONE NO.
NAME & ADDRESS OF PUBLIC WORKS PROJECT	DATE YOUR CONTRACT EXECUTED
	DATE OF EXPECTED OR ACTUAL START OF PROJECT
NAME & ADDRESS OF PUBLIC AGENCY AWARDED CONTRACT	ESTIMATED NUMBER OF JOURNEYMEN HOURS
	OCCUPATION OF APPRENTICE
THIS FORM IS BEING SENT TO: (NAME & ADDRESS OF APPRENTICESHIP PROGRAM(S))	ESTIMATED NUMBER OF APPRENTICE HOURS
	APPROXIMATE DATES TO BE EMPLOYED

This is not a request for dispatch of apprentices.

Contractors must make a separate request for actual dispatch, in accordance with Section 230.1(a) California Code of Regulations

Check One Of The Boxes Below

1. We are already approved to train apprentices by the _____
Apprenticeship Committee. We will employ and train under their Standards. Enter name of the Committee

2. We will comply with the standards of _____
Apprenticeship Committee for the duration of this job only. Enter name of the Committee

3. We will employ and train apprentices in accordance with the California Apprenticeship Council regulations, including § 230.1 (c) which requires that apprentices employed on public projects can only be assigned to perform work of the craft or trade to which the apprentice is registered and that the apprentices must at all times work with or under the direct supervision of journeyman/men.

Signature _____ Date _____

Typed Name _____

Title _____

**State of California - Department of Industrial Relations DIVISION
OF APPRENTICESHIP STANDARDS**

DAS 140 (REV. 1104)



REQUEST FOR DISPATCH OF AN APPRENTICE – DAS 142 FORM

DO NOT SEND THIS FORM TO DAS

You may use this form to request dispatch of an apprentice from the Apprenticeship Committee in the craft or trade in the area of the public work. Go to: <http://www.dir.ca.gov/DAS/PublicWorksForms.htm> for information about programs in your area and trade. You may also consult your local Division Apprenticeship Standards (DAS) office whose telephone number may be found in your local directory under California, State of, Industrial Relations, Division of Apprenticeship Standards. **Except for projects with less than 40 hours of journeyman work, you must request and employ apprentices in no less than 8 hour increments.**

Date: _____	Contractor Requesting Dispatch:
To Applicable Apprenticeship Committee:	Name: _____
Name: _____	Address: _____
Address: _____	License No. _____
Tel. No. _____ Fax No. _____	Tel. No. _____ Fax No. _____

Project Information:

Contract No. _____

Name of the Project: _____

Address: _____

Dispatch Request Information:

Number of Apprentice(s) Needed: _____ Craft or Trade: _____

Date Apprentice(s) to Report: _____ (72 hrs. notice required) Time to Report: _____

Name of Person to Report to: _____

Address to Report to: _____

*You may use this form to make your written request for the dispatch of an apprentice. Requests for dispatch must be in writing and submitted at least 72 hours in advance (excluding weekends and holidays) via first class mail, fax or email. **Proof of submission may be required.** Please take note of California Code of Regulations, Title 8, § 230.1 (a) for all applicable requirements regarding apprenticeship requests and/or visit <http://www.dir.ca.gov/DAS/DASApprenticesOnPublicWorksSummaryOfRequirements.htm>*

DAS 142 (Revised 12/11)

State of California
 Department of Industrial Relations
 California Apprenticeship Council
 P.O. Box 420603
 San Francisco, CA 94142

TRAINING FUND CONTRIBUTIONS

Please use a separate form for each jobsite, listing the occupations for the jobsite. One check payable to the California Apprenticeship Council may be submitted for all jobsites and/or occupations. Training fund contributions are not accepted by the California Apprenticeship Council for federal public works projects, unless the project is administered by a public agency or for non-apprenticeable occupations such as utility technicians, lead abatement worker, etc.

California Apprenticeship Council

****Training Fund Contributions are due on the 15th of each month****

PLEASE TYPE OR PRINT IN BLACK OR BLUE INK. ALL FIELDS MUST BE FILLED IN TO ENSURE SUCCESSFUL SUBMISSION AND PROCESS OF PAYMENT.

NAME AND ADDRESS OF CONTRACTOR/SUB CONTRACTOR MAKING CONTRIBUTION		CONTRACTOR'S LICENSE NUMBER	
NAME AND ADDRESS OF PUBLIC AGENCY AWARDED CONTRACT		CONTRACT OR PROJECT NUMBER	
		JOBSITE LOCATION (INCLUDE COUNTY) IF APPLICABLE - GIVE NAME OF SCHOOL, HOSPITAL, BUILDING, etc.	
		PERIOD COVERED BY CONTRIBUTION (FROM - TO)	
CLASSIFICATIONS OF WORKERS (CARPENTER, PLUMBER, ELECTRICIAN, ETC.)	COUNTY WORK PERFORMED IN	ALL HOURS	CONTRIBUTION RATE PER HOUR
			\$ 0.00
			\$ 0.00
			\$ 0.00
			\$ 0.00
			\$ 0.00
			\$ 0.00
		TOTAL	\$ 0.00
IF APPRENTICES WERE EMPLOYED, PLEASE LIST THE APPRENTICESHIP PROGRAM AND NUMBER OF APPRENTICE HOURS WORKED			
TYPE OR PRINT YOUR NAME AND TITLE		DATE	
EMAIL		AREA CODE & TELEPHONE NUMBER	

CAC 2 (rev.6/12)

TRAINING FUND CONTRIBUTIONS

DIR A-1-131 PAYROLL REPORTING FORM
AND FRINGE BENEFIT STATEMENT -
ADDENDUM J

NOTICE TO PUBLIC ENTITY

For Privacy Considerations

Fold back along dotted line prior to copying for release to general public (private persons).

(Paper Size then 8-1/2 x 11 inches)

I, _____, the undersigned, am the
(Name – print)

_____ with the authority to act for and on behalf of
(Position in business)

_____, certify under penalty of perjury
(Name of business and/or contractor)

that the records or copies thereof submitted and consisting of _____
(Description, number of pages)

are the originals or true, full, and correct copies of the originals which depict the payroll record(s)
of the actual disbursements by way of cash, check, or whatever form to the individual or
individuals named.

Date: _____

Signature: _____

A public entity may require a stricter and/or more extensive form of certification.

Statement of Employer Payments

Date:		In Reply, Refer to Case No:	
Prime:			
Subcontractor:			
PROJECT NAME:			
PROJECT CONTRACT NO.:		County/location:	



HEALTH AND WELFARE			
NAME OF PLAN	Address, City and Zip		
ADMINISTRATOR	Address, City and Zip		
CLASSIFICATION(S) USED	CONTRIBUTION PER CLASSIFICATION PER HOUR		
CONTRIBUTIONS:	WEEKLY	MONTHLY	QUARTERLY ANNUALLY
PENSION			
NAME OF PLAN	Address, City and Zip		
ADMINISTRATOR	Address, City and Zip		
CLASSIFICATION(S) USED	CONTRIBUTION PER CLASSIFICATION PER HOUR		
CONTRIBUTIONS:	WEEKLY	MONTHLY	QUARTERLY ANNUALLY
VACATION/HOLIDAY			
NAME OF PLAN	Address, City and Zip		
ADMINISTRATOR	Address, City and Zip		
CLASSIFICATION(S) USED	CONTRIBUTION PER CLASSIFICATION PER HOUR		
CONTRIBUTIONS:	WEEKLY	MONTHLY	QUARTERLY ANNUALLY
TRAINING			
NAME OF PLAN	Address, City and Zip		
ADMINISTRATOR	Address, City and Zip		
CLASSIFICATION(S) USED	CONTRIBUTION PER CLASSIFICATION PER HOUR		
CONTRIBUTIONS:	WEEKLY	MONTHLY	QUARTERLY ANNUALLY

IF YOU USE OTHER PLANS NOT LISTED ABOVE, YOU MAY USE THE BACK OF THIS FORM TO PROVIDE THIS ADDITIONAL INFORMATION

PW 26

**SUGGESTED CHECKLIST OF LABOR LAW
REQUIREMENTS (CCR 16430) - ADDENDUM K**

Appendix A

Suggested Checklist of Labor Law Requirements to Review at Prejob Conference, Section 16421, with suggested Certification by subcontractor.

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

- (1) The contractor's duty to pay prevailing wages under Labor Code Section 1770 et seq., should the project exceed the exemption amounts;
- (2) The contractor's duty to employ registered apprentices on the public works project under Labor Code Section 1777.5;
- (3) The penalties for failure to pay prevailing wages (for non-exempt projects) and employ apprentices including forfeitures and debarment under Labor Code Sections 1775 and 1777.7;
- (4) The requirement to keep and submit copies upon request of certified payroll records under Labor Code Section 1776, and penalties for failure to do so under Labor Code Section 1776(g);
- (5) The prohibition against employment discrimination under Labor Code Section 1777.6; the Government Code, and Title VII of the Civil Rights Act of 1964;
- (6) The prohibition against accepting or extracting kickback from employee wages under Labor Code Section 1778;
- (7) The prohibition against accepting fees for registering any person for public work under Labor Code Section 1779; or for filling work orders on public works under Labor Code Section 1780;
- (8) The requirement to list all subcontractors under Public Contracts Code Section 4104;
- (9) The requirement to be properly licensed and to require all subcontractors to be properly licensed and the penalty for employing workers while unlicensed under Labor Code Section 1021 and under the California Contractors License Law, found at Business and Professions Code Section 7000 et seq;
- (10) The prohibition against unfair competition under Business and Professions Code Sections 17200-17208;
- (11) The requirement that the contractor be properly insured for Workers Compensation under Labor Code Section 1861;
- (12) The requirement that the contractor abide by the Occupational, Safety and Health laws and regulations that apply to the particular construction project;
- (13) The federal prohibition against hiring undocumented workers, and the requirement to secure proof of eligibility/citizenship from all workers.
- (14) The requirement to provide itemized wage statements to employees under Labor Code Section 226.

Certification:

I acknowledge that I have been informed and am aware of the foregoing requirements and that I am authorized to make this certification on behalf of [name of subcontractor].

Date

Name of person signing and company