CALIFORNIA LABOR COMMISSIONER'S OFFICE • FOUNDATION FOR FAIR CONTRACTING PRESENT

#### PREVAILING WAGE/LABOR COMPLIANCE WEBINAR

Thursday • April 7, 2022 • 8:00 a.m. – 3:30 p.m.

Time	Item	Speaker(s)
8:00 AM – 8:15 AM	Welcome and Opening Remarks	Jesse Jimenez
8:15 AM – 9:15 AM	Davis-Bacon Compliance Principles – Federal Requirements - U.S. Department of Labor	Rebecca Clark
9:15 AM – 10:15 AM	Labor Commissioner's Office - Legal Updates	David Cross/Bill Snyder
10:15 AM – 10:30 AM	Break	
10:30 AM – 10:45 AM	<ul> <li>Department of Industrial Relations</li> <li>Labor Enforcement Task Force</li> <li>PW Strategic Enforcement Presentation</li> </ul>	Christine Muraoka
10:45 AM – 11:45 AM	Office of the Director – Legal     Coverage	Ken Lau
11:45 AM – 12:15 PM	Lunch	
12:15 PM – 12:30 PM	Pre-Qualification of Contractors	Jessica Santiesteban
12:30 PM – 1:30 PM	Awarding Body Responsibilities/Skilled and Trained Workforce Enforcement	Sara Brown/Christopher Hightower
1:30 PM – 1:45 PM	Break	
1:45 PM – 2:45 PM	Contractor Responsibilities	Eric Raktiprakorn/ Alfredo Roman
2:45 PM – 3:30 PM	Q & A	Panel - All





# Prevailing Wage/Labor Compliance Webinar

Welcome!





#### Getting started...

#### Refer to your **Confirmation Email** for:

Handout Location

https://www.ffccalifornia.com/registration-handouts

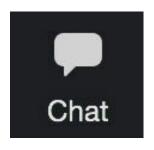
Troubleshooting Zoom

Call-In Telephone Numbers/Meeting Codes





#### On your Zoom menu, use:



- Viewing Moderator Posts
- Reporting Technical Issues
- Speaker Contact Information



Prevailing Wage/Labor Compliance Questions Only!





• Nothing in this presentation represents the opinion of the Labor Commissioner's Office or the Department of Industrial Relations.

### **Disclaimer**

- Anything you see or hear may or may not be true on your specific contract.
- You should do your due diligence when making any decision related to public works contracting.







- Submit questions through the box
- Keep the question simple and concise
- Provide relevant information needed to answer the question

Note: Some questions may not be answered because of time constraints, vagueness of the question, and/or complexity of the topic.





# Frequently asked questions





Question: Do prevailing wage requirements apply only to projects formally put out to bid by a public agency?

Answer: No, prevailing wage requirements can apply to projects not formally bid. They can also apply when the awarding agency is not a public agency.





Question: Contractors are now required to submit eCPRs. Are contractors still required to maintain certified payroll records?

Answer:

Yes, eCPRs are a completely different requirement and do not contain all required information as set forth in Labor Code Section 1776.





Question: Do public agencies and contractors still need to provide "certified payroll records" upon request by a member of the public?

Answer:

Yes, public agencies and contractors are still required to provide "certified payroll records" upon request, even if the contractor submitted eCPRs online. Remember, eCPRs are different than "certified payroll records."





Question: Is it a good idea to monitor my own subcontractors?

Answer:

Yes, higher-tier contractors are generally liable for their subcontractors' compliance with wages, apprenticeship, registration, etc.





Question: Public works laws are confusing and difficult. Where can I complain about these issues?

Answer: The California Legislature is responsible for creating these laws not the Labor Commissioner's Office or the Department of Industrial Relations.





Question:

Since public works laws are so difficult, is it normal for contractors just starting out in public works to be given a break if mistakes are made?

Answer:

No, not usually. If you are just starting out and do not feel comfortable with all the public works requirements, you may want to consider not bidding on public works projects until you know how to comply with all of the laws.





Question: Can you tell me one place that I can go to get answers to my prevailing wage questions?

Answer: www.ffccalifornia.com





#### A Few Final Reminders...

• The webinar may be recorded, but it is utilized for staff training purposes only.

• Speakers contact information and copies of the Q&A will be provided in an email following the event.

• Please fill out the Evaluation/Survey.





# Thank You for Joining the Webinar







**Bridging the Gap** 

# Davis-Bacon and the Bipartisan Infrastructure Law



#### Disclaimer

This presentation is intended as general information only and does not carry the force of legal opinion.

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## **Davis-Bacon Act Coverage**

Applies to contracts in excess of \$2,000 to which the Federal Government or the District of Columbia is a party for construction, alteration, and/or repair, including painting and decorating, of public buildings or public works.

### **Davis-Bacon Related Acts**

Davis-Bacon (DB) requirements extended to numerous "related Acts" that provide federal assistance by

- Grants
- Loans
- Loan guarantees
- Insurance

# Bipartisan Infrastructure Law

#### The Bipartisan Infrastructure Law will:

- Create an estimated 800,000 good-paying jobs that will expand the middle class
- Revitalize our nation's transportation, communications and utilities systems
- Build a more resilient, reliable, and environmentally sound future

# DBRA Coverage of Bipartisan Infrastructure Law Construction Projects

The Bipartisan Infrastructure Law (BIL) applies Davis-Bacon labor standards to federally funded or assisted construction projects in three different ways

- Adding funding to programs previously authorized by an existing Davis-Bacon Related Act
- Adding new programs under the umbrella of an existing Davis-Bacon Related Act
- Including provisions which expressly provide that Davis-Bacon labor standards apply to all construction projects receiving funding under particular programs created by or funded through BIL

# Projects subject to Davis-Bacon labor standards through BIL include:



#### Roads, bridges and public transit

- Includes Surface
   Transportation
   Reauthorization Act and
   Surface Transportation
   Investment Act funding
- Provides funding to replace and repair bridges
- Includes major project competitive grant programs
- Funds nation's transit system repair backlog
- Expands transit systems and supports clean transit



#### Airports, ports and waterways

- Increases funds for airport improvement grants for runways, gates, and taxiways
- Provides funding for airport terminal improvement
- Improves air traffic control infrastructure
- Supplies funding for waterway and coastal infrastructure, inland waterway improvements, port infrastructure, and land ports of entry



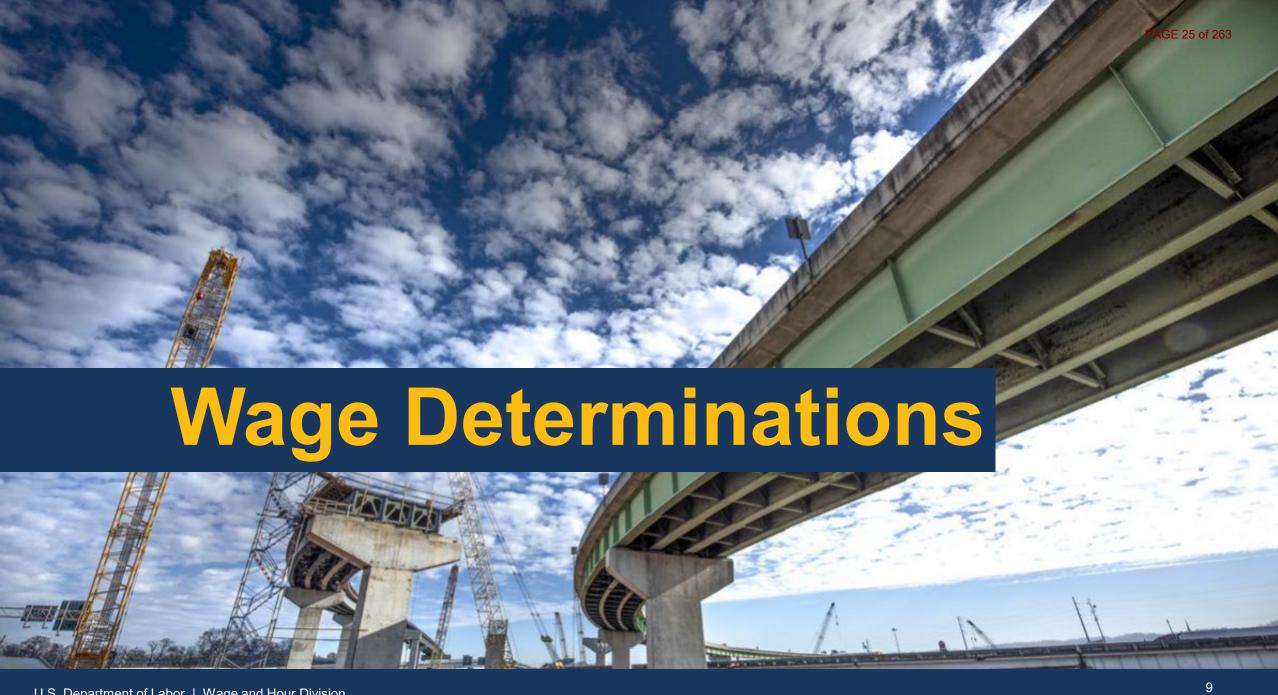
#### Water infrastructure, power and grid

- Increases funding for Drinking Water and Wastewater Infrastructure Act of 2021 and lead service line replacement
- Provides funding for grid reliability and resiliency
- Supports critical minerals and other supply chains for clean energy
- Includes funding for technologies like carbon capture, hydrogen, direct air capture, and energy efficiency



#### Enhanced disaster resiliency

- Supplies funding for cybersecurity, flood and wildfire mitigation, coastal resiliency, ecosystem restoration and heat stress
- Provides funding for home weatherization, prioritizing assistance for low-income individuals



# Wage Determinations (WDs)

Davis-Bacon Wage Determinations (WDs) specify the prevailing wages, including fringe benefits, that prevail for the described classes of laborers and mechanics employed on construction projects of a similar character in the locality.

Two types of wage determinations: General and Project

- In almost all instances, general WDs are available on sam.gov and should be used in bid solicitations and contracts on which the Davis-Bacon labor standards apply.
- Project WDs should only be requested under certain circumstances

# Selecting the Correct WDs-Type

Selecting and incorporating the appropriate general wage determination for the project type. Guidance provided in AAM 130.

- Building
- Residential
- Heavy
- Highway

Multiple wage determinations may apply where there are separate construction types and the different type of construction is at least 20 percent of the project cost or exceeds \$2.5 million – guidance provided in AAM 131 and 236

# Selecting the Correct WDs-Date

#### Incorporate most current WD:

- Negotiated contracts ("RFPs") Time of award.
- Competitively bid contracts: In effect 10 days or more before opening of bids.
- Exceptions.
- If the contract is not awarded within 90 days of bid opening, any modification to the WD must be incorporated unless the federal agency requests and obtains an extension of the 90 day period.

# Contracting Agency Responsibilities

- Ensure proper wage determination (WD) is identified and applied;
- Advise contractors which schedule of rates applies to various construction items; and
- After consulting with WHD, advise contractors regarding the duties performed by various crafts in the WD.

# Interpreting General WDs

Useful information contained in a general wage determination:

- State and county
- Type of construction with description
- Record of modifications
- List of classifications and rates
- Basis for rates Identifiers
- Union Identifiers
- Union Weighted Average Identifiers
- SU Identifiers

# **Interpreting General WDs – Cover Sheet**

General Decision Number: LA170002 01/20/2017 LA2

Superseded General Decision Number: LA20160002

State: Louisiana

Construction Type: Heavy

Counties: Acadia, Ascension, Bossier, Caddo, Calcasieu, East Baton Rouge, Lafayette, Lafourche, Livingston, Ouachita, Rapides, St Landry, St Martin, Terrebonne, Webster and West Baton Rouge Counties in Louisiana.

HEAVY CONSTRUCTION PROJECTS (includes flood control, water & sewer lines, and water wells; excludes elevated storage tanks, industrial construction-chemical processing, power plants, and refineries)

Note: Under Executive Order (EO) 13658, an hourly minimum wage of \$10.20 for calendar year 2017 applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2015. If this contract is covered by the EO, the contractor must pay all workers in any classification listed on this wage determination at least \$10.20 (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in calendar year 2017. The EO minimum wage rate will be adjusted annually. Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts.

Modification Number Publication Date 0 01/06/2017

1 01/13/2017 2 01/20/2017

# Interpreting General WDs – Identifiers

List of classifications and rates.

- Union Identifiers; and
- SU Identifiers.

# Interpreting General WDs – Union IDs

Union identifiers - **ELEV0101-001** 10/01/2017

- Elevator Contractors: International Union
- Local 101 Local union number
- 001 internal processing number
- 10/01/2017 Date the rate became effective on the CBA

**Fringes** 

Rates

## Interpreting General WDs – Union Example

CARP 0055-001

11/01/2016

Carpenter (Acoustical Ceiling, \$26.25 \$8.64
 Installation, and Dry Wall Hanging Only)

CBA rates are updated when CBA rates are changed

# Interpreting General WDs – Survey IDs

SU (Non-Union) Identifiers

SUCO2015-015 07/31/2015

SU: Survey Basis of Rate(s)

CO: Colorado

2015: Date of Survey

015: Internal Numbering

<sup>\*</sup> SU rates remain unchanged until new survey

# Interpreting General WDs – SU Example

SUCO2015-015

07/31/2015

	Rates	Fringes
Bricklayer	\$21.96	\$0.00
Carpenter	\$18.22	\$0.00

### Interpreting General WDs – UAVG

#### **UAVG- Union Weighted Average Identifiers**

UAVG-CO-0016 01/01/2016

Rates Fringes

Operator: Bulldozer......... \$37.85 \$22.72

A UAVG rate prevails where 100% of the data reported for the classification is union data but because more than one union performed the work in the classification in the locality, no single majority prevailed.

**UAVG** rates are updated annually



#### Conformances

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses

(29 CFR 5.5(a)(1)(ii)).

- The work to be performed by the proposed classification is not performed by a classification already in the wage determination (WD);
- The proposed wage rate must bear a reasonable relationship to WD rates; and
- The proposed classification is utilized in the area by the construction industry.

# **Unnecessary Conformance Actions**

Conformance requests are <u>not</u> needed for <u>bona fide</u>:

- Apprentices
- Trainees
- Welders

# **Conformances: Contracting Agencies & Contractors**

#### Pre-Bid/Pre-Award

- Review the WD
- Compare the WD with the project work
- Anticipate needed classifications
- Apply key criteria

#### **Conformance Process - Contractor**

#### After-Award:

- Identify needed classes;
  - At the pre-construction conference.
  - From certified payrolls.
- Advise agency of the needed classification;
- Complete Contractor Part of SF-Form 1444.
  - Apply Conformance Key Criteria.
- Forward SF-Form 1444 to agency for review, signature, and submission to DOL.



#### Wages and Fringe Benefits

All <u>laborers and mechanics</u> employed or working upon the <u>site of the work</u> must be paid at least the applicable prevailing wage rate for the classification of work performed as listed in the applicable wage determination or a rate approved in accordance with the "conformance process" set forth at 29 CFR 5.5(a)(1)(ii), without regard to skill.

#### Wages and Fringe Benefits-Classification

Laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill.

Laborers and mechanics who perform work in more than one classification may be paid the different applicable rates for the work they actually perform if the employer keeps an accurate record of the time spent working in each classification and pays accordingly.

#### Wages and Fringe Benefits-Pay Frequency

The laborers and mechanics working on the site of the work must be paid weekly, with the exception of fringe benefit contributions paid into a bona fide FB plan, which must be paid no less often than quarterly.

# Wages and Fringe Benefits-Payment

Under DBA, FBs are a component of the DBA "prevailing wage." The prevailing wage obligation may be satisfied by:

- Paying the base hourly rate (BHR) and FB in cash (including negotiable instruments payable on demand);
- Contributing payments to a bona fide plan; or
- Any combination of the two.

Cash wages paid in excess of BHR may count to offset or satisfy the FB obligation

## **Overtime Pay**

#### Contract Work Hours and Safety Standards Act (CWHSSA)

- Covers contracts over \$100,000 (\$150,000 for contracts procured under the Federal Acquisition Regulations) that require or involve the employment of laborers, mechanics, watchmen or guards on DBA or DBRA covered construction contracts
- Is self-executing (even if not stated in contract)
- Has no "site of work" limitation

Fair Labor Standards Act (FLSA) applies more broadly, with over 130 million workers subject to coverage.

# Requirements of CWHSSA-General

Requires overtime pay for laborers, mechanics, guards, and watchmen at a rate of one and a half times the basic rate of pay for hours worked in excess of 40 in a workweek on covered contracts

- The basic rate of pay under CWHSSA is the straight time hourly rate
- The "basic rate" cannot be less than the basic hourly rate required in an applicable wage determination, not including any required fringe benefit amount.

#### Requirements of CWHSSA

- If an employee is paid a regular rate above the basic hourly rate (excluding fringe benefits or cash payments in lieu of fringe benefits), that regular rate will be considered the basic rate.
- Amounts paid to fulfill the fringe benefit portion of the prevailing wages listed in the applicable wage determination are excluded in computing overtime obligations under CWHSSA

#### **Application of CWHSSA**

CWHSSA applies to laborers, mechanics, guards and watchmen for the time spent on covered contract work only

- Total up all the time each employee spent working <u>on covered</u> contracts (off-site as well as on-site on DBA/DBRA projects)
- Exclude all commercial, non-government, non-covered work.
- Liquidated damages can be assessed per day for each laborer, mechanic, guard, or watchman not paid proper overtime

# **Certified Payrolls**

Two separate contract clause requirements apply to "certified payrolls" for a project:

- The contractor shall submit weekly for any week in which any contract work is performed a copy of all payrolls.
   29 CFR 5.5(a)(3)(ii)(A).
- Each weekly payroll submitted must be accompanied by a "Statement of Compliance."
   29 CFR 5.5(a)(3)(ii)(B).

# **Certified Payrolls-Reporting**

Weekly payrolls must include specific information as required by 29 CFR 5.5(a)(3).

Weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose The WH-347 form, with instructions, is at:

https://www.dol.gov/agencies/whd/forms/wh347



# Investigations

#### **DOL Functions/Responsibilities:**

- Determining "prevailing wages";
- Issuing regulations and standards to be observed by contracting agencies; and
- Perform oversight function and has independent authority to conduct investigations (contracting agencies also have the authority to conduct investigations)

### **Investigative Process**

- Initial conference with employer.
- Examine certified payrolls.
- Examine basic payroll records.
- Check for compliance with apprenticeship and/or trainee requirements.
- Interview employees
- Determine if a conformance is necessary.
- Compute back wages and liquidated damages, if any
- Final conference with employer to discuss results of the investigation.

# Withholding

- DBA and CWHSSA provide for withholding of contract funds to satisfy alleged wage underpayments pending resolution of a wage dispute. (40 U.S.C. § 3142(c)(3); 40 U.S.C. § 3702(d).)
- Withholding of contract funds is an effective enforcement tool in DBA/DBRA/CWHSSA cases.
- It protects the rights of covered workers to wages due them.

#### Withholding of Contract Funds

FAR guidance in 48 CFR Part 22 instructs that if the contracting officer believes a violation exists, <u>or</u> upon request of the Department of Labor:

 The contracting officer must withhold from payments due the contractor an amount equal to the estimated wage underpayment and estimated liquidated damages due under the CWHSSA. (48 CFR 22.406-9(a))

#### Debarment

Occurs when a contractor is declared *ineligible* for future contracts due to:

- Violations of the DBA in disregard of its obligations to employees or subcontractors.
- Aggravated or willful violations under the labor standards provisions of Related Acts.
- Period of ineligibility is 3 years for DBA and up to 3 years for DBRA.
- The debarment process is given at 29 CFR 5.12(b)

#### **Debarment Criteria**

#### Debarment is considered when a contractor has:

- Submitted falsified certified payrolls;
- Required "kickbacks" of wages or back wages;
- Committed repeat violations;
- Committed serious violations;
- Misclassified covered workers in clear disregard of proper classification norms; and/or
- As a prime contractor, failed to ensure compliance by subcontractors.

#### **Internet Sites**

- Wage Determinations: <a href="https://sam.gov">https://sam.gov</a>
- Wage and Hour Division: <a href="http://www.dol.gov/agencies/whd/government-contracts">http://www.dol.gov/agencies/whd/government-contracts</a>
- WHD Protections for Workers in Construction under the Bipartisan Infrastructure Law: <a href="https://www.dol.gov/agencies/whd/government-contracts/protections-for-workers-in-construction">https://www.dol.gov/agencies/whd/government-contracts/protections-for-workers-in-construction</a>
- Resource Book: <a href="http://www.dol.gov/agencies/whd/prevailing-wage-resource-book">http://www.dol.gov/agencies/whd/prevailing-wage-resource-book</a>
- Office of the Administrative Law Judges Law Library: <a href="https://www.dol.gov/agencies/oalj/topics/libraries/LIBDBA">https://www.dol.gov/agencies/oalj/topics/libraries/LIBDBA</a>
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# HOT TOPICS Public Works Housing Training 2022

Housing Training Prepared by William A. Snyder and Sotivear Sim Attorneys for the Labor Commissioner Division of Labor Standards Enforcement

#### California's "Affordable Housing" Crisis.

"California has a housing supply and affordability crisis of historic proportions." The consequences of failing to effectively and aggressively confront this crisis are hurting millions of Californians, robbing future generations of the chance to call California home, stifling economic opportunities for workers and businesses, worsening poverty and homelessness, and undermining the state's environmental and climate objectives." Gov. Code §65589.5 (a)(2)(A).

The "Streamlined Ministerial Approval Process" of Gov. C. §65913.4 imposes a non-public work prevailing wage & "skilled & trained workforce" obligation.



See: California Dept. of Housing & Community Development's "Streamlined Ministerial Approval Guidelines," dated March 30, 2021, at https://www.hcd.ca.gov/policy-research/docs/sb-35-guidelines-update-final.pdf

Gov. Code §65913.4 (k) (6) makes this law applicable to cities and counties, including a charter city, a charter county, and a "charter city and county".

Imposes a *non-public works* "prevailing wage" obligation and an obligation to employ a "skilled and trained workforce", to specified multi-family housing projects. See: "Streamlined Ministerial Approval Guidelines," dated March 30, 2021, at https://www.hcd.ca.gov/policyresearch/docs/sb-35-guidelines-update-final.pdf

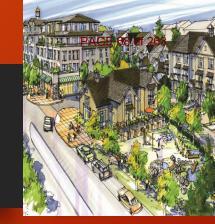
- This presentation does not cover the process for determining eligibility of development projects, nor the elements requiring differing percentages of "skilled & trained workforce" obligations depending on the craft, but will familiarize you with:
  - The scope of "Prevailing Wage" obligation under Gov. Code §65913.4;
  - Potential confusion with established housing exemptions/exclusions; and
  - Potential conflict with alternative workweek schedules.

#### DLSE enforcement of Gov. C. § Gov. C. §65913.4 (a) (8) (i).



If the developer certified that the *entirety* of the project is a public work for purposes of Labor Code §1720 et seq., then the "usual" public works laws apply, including the obligation to pay prevailing wages and to employ apprentices.

# If developer certified that "all construction workers employed in the execution of the development" will be paid prevailing wages:



All of the following apply to the portions of the development that are not a public work:

- 1. Developer shall ensure that the PW requirement is in all contracts for the performance of the work;
- 2. All contractors and subcontractors shall pay all construction workers employed in the execution of the work at least the general prevailing wages, except that apprentices registered in programs approved by DAS may be paid the applicable apprentice prevailing rate;
- 3. All contractors and subcontractors shall maintain CPRs per Labor C. §1776 & make them available for inspection and copying; and
- 4. DLSE may issue a CWPA within 18 months after completion of the development and if DLSE does so, the contractor, subcontractor, and surety are liable for LDs as set forth in Lab. Code §1742.1.

# Distinctions in DLSE enforcement of Gov. C. §65913.4 from traditional Public Works enforcement.

Maintenance and inspection of CPRs and DLSE enforcement via CWPA do not apply if all contractors and subcontractors on the project are covered by a PLA, as defined in Pub. Contract C. §2500 (b)(1).

Despite Lab. C. §1773.1 (c)(2) requirement that employer payments not reduce the obligation to pay the hourly straight or overtime prevailing wage, this requirement *shall not apply* if otherwise provided in a CBA covering the worker.\* Also, the requirement to pay at least the PW rate *does not preclude the use of an alternative workweek schedule adopted pursuant to Lab. C. §§ 511 or 514.* Gov. C. §65913.4 (a)(8)(A)(ii)(VI).

\*Gov. C. §65913.4 (a)(8)(A)(ii)(VI), unlike Lab. C. §1773.1 (c) (3), does not require that the employer payment contribution be "irrevocable unless made in error."

See: California Dept. of Housing & Community Development's "Streamlined Ministerial Approval" Guidelines," dated March 30, 2021, at https://www.hcd.ca.gov/policy-research/docs/sb-35guidelines-update-final.pdf

# SCOPE OF "SKILLED AND TRAINED WORKFORCE" OBLIGATION UNDER GOV. CODE §65913.4 (a)(8)(B)

Certain multi-family housing developments that are not 100% "subsidized\* affordable housing" must use a "skilled and trained workforce" (as defined in Pub. Contract C., "Chapter 2.9" (§§ 2600 et seq.)). "Subsidized," as defined in Gov. C. §65913.4, subd. (k) (10), means units that are price or rent restricted such that they are permanently affordable to households meeting the definition of very low and lower income, as defined in Health & Safety Code §§ 50079.5 and 50105.

#### What is a "skilled and trained workforce"?

(Public Contract Code §2601)

#### A STW meets **ALL** of the following conditions:

- ALL workers performing work in an apprenticeable occupation in the building and construction trades are EITHER:
  - Skilled Journeypersons OR
  - DAS-Registered Apprentices
- 30% 60% of <u>ALL</u> Skilled Journeypersons must be **graduates of apprenticeship program**.
  - Graduation percentage requirement varies depending on specific craft.
  - Graduation percentage requirement can be met by counting <u>EITHER</u>:
    - Number of Skilled Journeypersons employed (head count) OR
    - Number of hours worked by Skilled Journeypersons (hours worked by trade)

#### **EXCEPT:**

- The graduation percentage requirement does not apply if less than 10 hours of work were performed in a calendar month (in a particular craft).
- The graduation percentage requirement does not apply if **BOTH**:
  - Subcontractor is **not listed in the bid** as required by Pub. Contract Code §4104; **AND**
  - Subcontract does not exceed ½% of total contract.

#### What is a "skilled and trained workforce"?

[For Visual Learners]

Graduated DAS-approved apprenticeship program

Graduated DOL-approved apprenticeship program

Who is a
Skilled
Journeyperson
(SJP)?

On-the-job experience = # hrs. required to graduate DAS-approved apprenticeship program

ALL WORKERS =

Skilled Journeypersons (SJP) OR DAS-registered apprentices

30-60% of SJP\*

GRADUATES of apprenticeship program

\*% requirement depends on craft

\*% requirement met by counting:

→# SJP (headcount) OR

→# hrs. worked by SJP

# Department of Housing & Community Development ("HCD") housing programs.

Multifamily Housing Program (Health & Saf. Code, Div. 31, Part 2, Chapt. 37, §§50675 et seq.): To be eligible for a MHP loan, a sponsor "shall" agree to pay prevailing wages with respect to construction assisted with the loan. (Health & Saf. Code §50675.4, subd. (c)(2).)

Transit-Oriented Development Implementation Program: Requires that loans for the development of rental housing made through this program be administered consistent with the Multifamily Housing Program (i.e., "shall" agree to pay prevailing wages . . . ) (Health & Saf. Code §53562 (b)(3), effective Jan. 1, 2022.)

Rental Construction Incentive Program (Health & Saf. Code §50745 et seq.): Establishes that any rental housing development assisted pursuant to this article "shall" be governed by a regulatory agreement that "shall include" a requirement that prevailing wage rates be paid with respect to construction of the rental housing development. (See, Health & Saf. Code §50749, subd. (b); and Ca. Code of Regs., tit. 25, §7802.)

## HCD housing programs - continued.

Joe Serna Jr. Farmworker Housing Grant Program. Requires that HCD makes funds available from, and administers loans under, this program "in a manner consistent with the Multifamily Housing Program." (Health & Saf. Code §50517.5 (a) (1) (A) (ii) & (iii), effective Jan. 1, 2022.)

Veterans and Affordable Housing Bond Act of 2018 (Health & Saf. Code, Part 16, §5400 et seq. together with Mil. & Vet. Code §998.600 et seq.): Establishes that programs funded with bond proceeds shall, when allocating financial support, give preference to projects that are "public works"... and other projects on which all construction workers will be paid at least the general prevailing rate of per diem wages as determined by the Director of Industrial Relations. (Health & Saf. Code 54009 (emphasis added).)

For links to various HCD Guidelines to these programs and others see: https://www.hcd.ca.gov/grants-funding/docs/admin\_memo21-06\_stacking\_prohibition\_repeal.pdf

Effect of funding conditions on "public works" analysis under Labor Code §1720.

Labor Code §1720 (c) exempts 5 categories of private development projects as "public work" otherwise defined under subdivision (b).

#### However, Labor Code §1720 (c) (1) and (c) (5) excludes from the exemption:

- (1) Private residential projects built on private property . . . [if] the projects are built pursuant to an agreement with a state agency, a redevelopment agency, a successor agency to a redevelopment agency when acting in that capacity, or a local public housing authority.
- (5) [Where] otherwise required by a public funding program . . .

Keep these exclusions in mind and take them into account where the funding conditions of the various HCD programs apply to require the payment of prevailing wages.

# Where preemption of HUD-funded work on Public Housing Authority owned or leased property applies, HUD requires:

"Any <u>solicitation of bids or proposals</u> issued by the PHA and <u>any contract</u> executed by the PHA for development, maintenance, and modernization of the project *shall* include a statement that any (state) prevailing wage rate . . . is inapplicable to the contract and shall not be enforced against the contractor or any subcontractor . . ."

(29 C.F.R. §965.101 (b). Emphasis added.)

## Residential vs. Commercial projects & rates.

Application of PW regulation (Title 8, Cal. Code of Regs. §16001) in

K.B. Engineering Inc. and LTD Construction Services GP dba Walton Construction Services, Case Nos. 15-0229-PWH and 15-0256-PWH ("KB Engineering")

# Title 8, Calif. Code of Regs., §16001, subds. (d) & (e) define "residential" and "commercial" projects as follows:

- (d) **Residential Projects**. Residential projects consisting of *single family homes and apartments up to and including four stories* are subject to payment of [PWs] when paid for in whole or in part out of public funds, including federally-funded or assisted residential projects controlled or carried out by an awarding body. . . .
- (e) **Commercial Projects**. All non-residential construction projects including new work, additions, alterations, reconstruction and repairs. *Includes residential projects over four stories*.

[Emphasis added.]

In *KB Engineering* the Director determined a five-story building with four floors of apartments, a ground floor of retail & parking, and a subterranean parking level, qualified for "residential rates" for work on the four stories of apartments, but required commercial rates for work on the balance of the project.

#### The Director was guided by these facts:

- On January 26, 2009, DIR published an "Important Notice" regarding PW determinations for residential projects.
- On November 8, 2012, the AB had issued a letter advising bidders of residential rates for 12 trades/crafts and notifying them of the "Important Notice" advising that residential rate determinations applied only to the residential potion of the development;
- The March 2013 construction contract included as attachments the Residential Laborer, Residential Plumber and other residential determinations, along with the statement: "Th[ese] residential determination appl[y] only to the residential portion of the project meeting this definition."

# KB Engineering - continued - The Director reasoned;

Four stories of apartments are not necessarily the same as a four story apartment building. The Important Notice contemplates that up to four stories of apartments are eligible for residential rates but that commercial rates must be paid for the construction of ancillary facilities or "residential projects over four stories." . . . A stand-alone four-story apartment building would clearly be eligible for residential rates, but a separate parking facility for the apartments would require commercial rates. There is nothing in the record indicating that the result should be different if the four stories of apartments and the parking garage are under the same roof.

While five stories of apartments would prevent application of residential rates, that is not the case here. . . . ¶ The language of subdivision (e) must be read in context with subdivision (d) of section 16001, keeping in mind the purpose and effect of the regulation. . . . Whether or not the parking elements of the Project increase the height of the building to five stories overall, only four stories of apartments are being constructed. Therefore, the Project does not qualify as a "residential project over four stories" as contemplated by section 16001, subdivision (e).

NOTE: The Director's enforcement decisions are not precedential; the Jan. 26, 2009 Important Notice is not in the Archives.

# LINKS TO CALIFORNIA DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT PROGRAM GUIDELINES

<u>Multifamily Housing Program Final Guidelines (ca.gov) at p. 23, Section 7316, para. (e)</u>
- "Construction Requirements"

INFILL INFRASTRUCTURE GRANT GUIDELINES at p. 38, Section 314, "Prevailing Wages"

Transit-Oriented Development Guidelines - 4.30.2020 (ca.gov) at p. 30, para. E

Permanent Local Housing Allocation Program Non-Entitlement Local Government Competitive Notice of Funding Availability, Amended Nov. 6, 2020, at p. 12, para. D. "State Prevailing Wages"

No Place Like Home Program Round 3 Guidelines (ca.gov), at p. 42, Section 213; and p. 60, Section 304

# LINKS TO CALIFORNIA DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT PROGRAM GUIDELINES

Housing for a Healthy California Final Guidelines- Amended, at p. 30, Section 119, para. (a) Federal Overlays (includes required compliance with state prevailing wage laws).

Affordable Housing and Sustainable Communities Program, Round 5 Guidelines, amended 2/24/2021, at p. 53, Section 113 - "Prevailing Wages"

<u>Home Investment Partnerships Program, Notice of Funding Availability (ca.gov), at p. 44, Section VII, para. A "Federal Overlays"; and p. 46</u>

<u>Updated Streamlined Ministerial Approval Process (ca.gov) at p.12, para. 4 (A); p.21, para. d (1) (A) & d (1) (B); and pgs. 24-28, Section 403 "Labor Provisions"</u>

**Homekey Program Guidelines** 

### AB 1023

Assembly Bill 1023 became effective on January 1, 2022.

- AB1023 clarifies the requirements for contractors and subcontractors on public works projects to furnish
  electronic certified payroll records (eCPRs) to the Labor Commissioner and creates new penalties for a
  contractor's failure to do so.
- Existing law has required eCPRs since 2014 (SB 854) on a monthly basis. The Labor Commissioner has required contractors to report certified payroll information online using DIR's electronic certified reporting system.
- A few projects are exempt from the requirement to submit eCPRs to the DIR: (1) Small projects monitored and enforced by an approved labor compliance program (LCP) or covered by a qualifying project labor agreement. Small projects include projects of \$25,000 or less for construction work, and \$15,000 or less for alteration, demolition, repair, or maintenance work. Labor Code Section 1771.5; (2) Projects monitored by legacy LCPs, such as Caltrans, City of Los Angeles, Los Angeles Unified School District, and County of Sacramento.

### AB 1023

Note that submission of certain payroll information electronically is a requirement separate and distinct from other reporting obligations of contractors and subcontractors. For example, a contractor must provide certified copies of documents within 10 days of the Labor Commissioner's request. Labor Code §1776(d). Conversely, a contractor who provides payroll records upon the Labor Commissioner's request must still provide eCPRs on a monthly basis. See Office of the Labor Commissioner Public Works Manual, §3.1.6.

Before AB 1023, the Labor Commissioner's power to enforce the requirement of submitting eCPRs lacked meaningful penalties. AB 1023 makes a contractor or subcontractor who fails to furnish eCPRs at least monthly liable for a penalty of \$100 per day, up to \$5,000 per project. The penalties are enforced through the CWPA process. No penalties can be levied until 14 days after the deadline for furnishing records. The penalties only accrue to the actual contractor or subcontractor that failed to furnish the eCPRs.

Until now, the records specified in Section 1776 were to be furnished monthly, or more frequently if specified in the contract with the awarding body. AB 1023 clarifies the term "monthly" as being "at least once every 30 days while work is being performed on the project and within 30 days after the final day of work performed on the project." The definition tightens up the timing for submission of the eCPRs by reducing ambiguities about dates.

# LETF Strategic Enforcement of Public Works Construction

### **Christy Muraoka**

Labor Enforcement Task Force





## **AB 140**

**SEC. 26.** Section 1785 is added to the Labor Code, to read:

**1785.** (a) The director shall establish and maintain a strategic enforcement unit focused on construction, alteration, and repair projects. The unit shall enhance the department's enforcement of this code in construction, alteration, and repair projects, including projects funded pursuant to Section 50675.1.3 of the Health and Safety Code and other publicly funded residential construction projects. The unit shall have primary responsibility for enforcement of this code in construction projects subject to Section 50675.1.3 of the Health and Safety Code. Any funds appropriated to the department for purposes of this section shall be administered and allocated by the director.

- (b) The strategic enforcement unit described in subdivision (a) shall provide technical assistance to local public entities related to both of the following:
  - (1) Best practices for monitoring and enforcing requirements pertaining to construction, alteration, and repair projects paid for in whole or in part out of public funds, including, but not limited to, this chapter.
  - (2) Outreach and engagement with workers, employers, and state certified apprenticeship programs connected to construction, alteration, and repair projects.





The Labor Enforcement Task Force, under the direction of the Department of Industrial Relations, is a coalition of California State government enforcement agencies that work together and in partnership with local agencies to combat the underground economy. In this joint effort, information and resources are shared to ensure employees are paid properly and have safe work conditions and honest, law-abiding businesses have the opportunity for healthy competition.



# Combatting the Underground Economy

**LETF: The benefits of joint enforcement** 

- Coordinate across multiple agencies
- Share data, information, and resources
- Ensure employees are paid properly and have safe work conditions
- Provide honest, law-abiding businesses the opportunity for healthy competition
- Minimize business interruption through joint inspection
- Target enforcement on employers violating the law



# Strategic Enforcement of Public Works Projects

Pursuant to Assembly Bill 175 (Chapter 255, 2021), funding was appropriated from the Labor and Workforce Development Fund to support DIR in strategic enforcement focused on construction, alteration, and repair projects, subject to the provisions of Section 1785 of the Labor Code. This funding would provide enhanced strategic enforcement to target employers in the construction industry working on public works projects who are noncompliant with various labor laws.



# LETF Strategic Enforcement Partner Agencies

- Department of Industrial Relations
  - Division of Occupational Safety & Health (Cal/OSHA)
  - Labor Commissioner's Office (DLSE)



# LETF Strategic Enforcement Partner Agencies cont.

- Employment Development Department (EDD)
  - Main LETF partner for multiple industries
- Contractors State License Board (CSLB)
  - Key partner for construction enforcement
- California Department of Insurance (CDI)
  - Collaboration on insurance fraud cases
- Local District Attorneys
  - Collaboration enables investigation and prosecution of wage theft cases and other labor law violations through the exchange of information and resources.



## **LETF and HCD**

DIR is currently collaborating with the California Department of Housing and Community Development (HCD) to review their awarded Homekey Round 2 publicly funded housing projects. With the help of HCD's list of awarded projects the LETF can focus efforts on the enforcement of those Public Works construction projects.





## Background

Building on the success of both **Project Roomkey** and the first round of Homekey, Homekey Round 2 continues a statewide effort to sustain and rapidly expand housing for persons experiencing homelessness or at risk of homelessness, and who are, thereby, inherently impacted by COVID-19 and other communicable diseases.

Administered by the California Department of Housing and Community Development (HCD), approximately \$1.4 billion (FY 2021-22) in grant funding will be made available to local public entities, including cities, counties, or other local public entities, such as housing authorities or Tribal Entities within California.

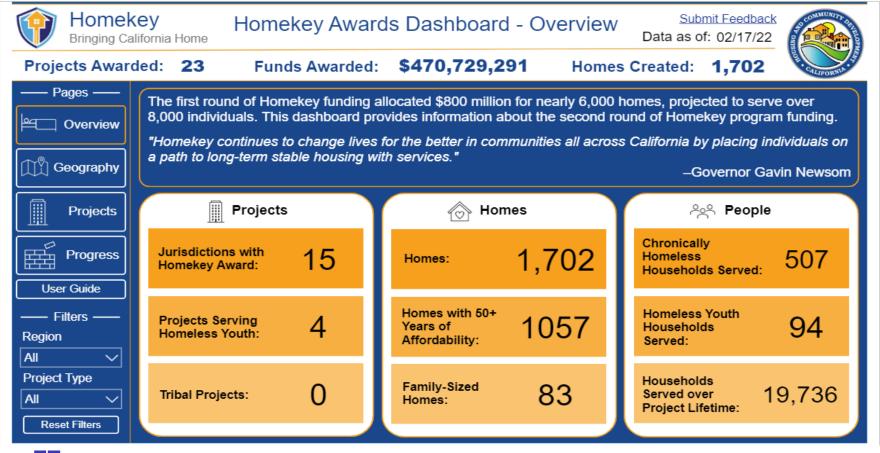


**List of Homekey Projects** 

Eligible Applicant	Project Name	City	Region	Housing Type	Eligible Use	Assisted Units	Total Units	Capital Award	Operating Award	Total Awarded Amount	Award Date
City of Victorville	Victorville Wellness Center	Victorville	Southern CA	Interim	Modular	110	110	\$23,612,058	\$4,392,000	\$28,004,058	12/15/2021
County of San Mateo	Navigation Center	Redwood City	Bay Area	Interim	Modular	240	240	\$46,091,860	\$9,230,400	\$55,322,260	12/15/2021
County of San Mateo	Stone Villa Interim Housing	San Mateo	Bay Area	Interim to Permanent	Hotel Acquisition and Rehabilitation	43	43	\$11,432,326	\$2,078,800	\$13,511,126	12/15/2021
Housing Authority of the County of Kern	6th Street Apartments	Bakersfield	San Joaquin Valley	Permanent	New Construction	39	40	\$7,990,000	\$386,946	\$8,376,946	12/15/2021
City and County of San Francisco	1321 Mission	San Francisco	Bay Area	Permanent	Existing Multifamily	159	160	\$46,290,000	\$8,488,000	\$54,778,000	12/21/2021
City of Rohnert Park	Homekey Rohnert Park	Rohnert Park	Bay Area	Interim	Modular	60	60	\$11,400,000	\$3,278,400	\$14,678,400	12/21/2021
Housing Authority of the City of Sacramento	Vista Nueva	Sacramento	Sacramento Area	Interim and Permanent	Hotel	116	116	\$28,511,662	\$498,688	\$29,010,350	12/21/2021
Housing Authority of the County of Kern	Cornerstone	Bakersfield	San Joaquin Valley- Homeless Youth	Interim and Permanent	Adaptive Reuse of Commercial Structure	32	34	\$6,250,452	\$1,521,481	\$7,771,933	12/21/2021
City of Healdsburg	L & M Village	Healdsburg	Bay Area	Interim	Hotel	22	22	\$5,720,000	\$1,328,800	\$7,048,800	12/21/2021
County of Santa Clara	Bella Vista Inn	Santa Clara	Bay Area	Interim with plan to convert to permanent	Motel Acquisition and Rehabilitation	64	65	\$18,552,114	\$3,591,200	\$22,143,314	1/4/2022
Housing Authority of the County of Kern	CityServe Network Housing	Bakersfield	San Joaquin Valley- Homeless Youth	Interim	Modular	125	126	\$25,483,500	\$4,515,996	\$29,999,496	1/4/2022
County of Santa Barbara	Hedges House of Hope	Goleta	Central Coast	Interim	Motel Acquisition and Rehabilitation	22	22	\$5,575,957	\$1,419,136	\$6,995,093	1/4/2022
Housing Authority of the City of Los Angeles	5050 W Pico	Los Angeles	Los Angeles County	Permanent	Existing Multifamily Acquisition	78	79	\$20,447,579	\$780,000	\$21,227,579	1/18/2022
Housing Authority of the City of Sacramento	Central Sacramento Studios	Sacramento	Sacramento Area	Permanent	Hotel Acquisition and Rehabilitation	92	93	\$23,548,000	\$376,598	\$23,924,598	1/18/2022
County of Marin	South Eliseo PSH	Larkspur	Bay Area	Permanent	Skilled Nursing Facility Acquisition and Rehabilitation	43	44	\$12,900,000	\$2,597,200	\$15,497,200	2/9/2022

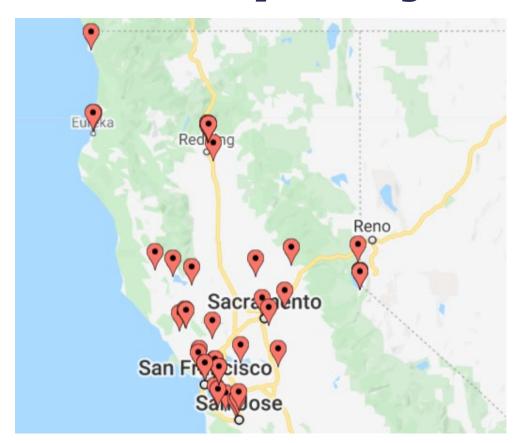


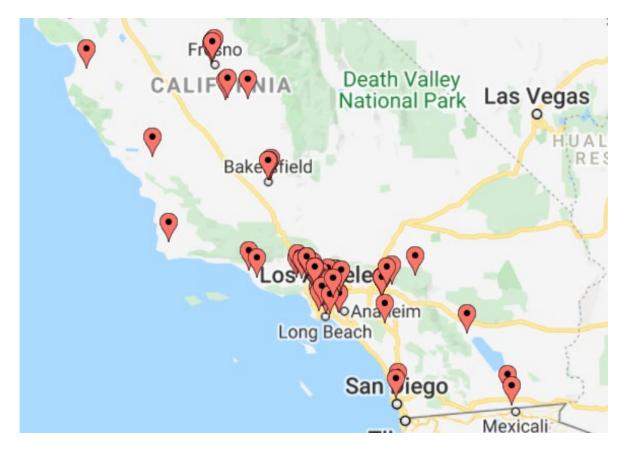
# **Homekey Round 2 Overview**





# **Homekey Project Sites**







# **LETF Strategic Enforcement-Non Homekey**

In addition to the focus on Homekey, LETF is also implementing strategic enforcement of non-Homekey related public works residential job sites. DLSE PW is reviewing all current and new complaints, and leads, to determine if they meet the criteria for joint enforcement operations at active on-site residential construction projects.



## Resources

Complete list of awarded Homekey Round 2 projects

https://homekey.hcd.ca.gov/sites/default/files/2022-02/Awardee-Funding-List-HK-B6.pdf

Frequently Asked Questions regarding Homekey Projects

https://www.hcd.ca.gov/grants-funding/activefunding/homekey/docs/homekey-frequently-asked-questions.pdf

Department of Industrial Relations Labor Enforcement Task Force (LETF)

https://www.dir.ca.gov/letf/letf.html



### **Contact LETF**

Hotline: 855-297-5322

Email: LETF@dir.ca.gov





# **Public Works**

State of California

Department of Industrial Relations

#### Department of Industrial Relations

Home

Labor Law

State of California

Cal/OSHA - Safety & Health

Workers' Comp

Self Insurance

Apprenticeship

Contact DIR

Director's Office

Boards

Department of Industrial Relations (DIR)

#### Divisions, Boards and Commissions at DIR

- Office of the Director Legal Unit (OD Legal)
  - Assists the Director with drafting coverage determinations
  - Acts as hearing officers for appeals of wage/penalty assessments
- Office of the Director Research (OD Research)
  - Issues Prevailing Wage Determinations
- Division of Labor Standards Enforcement (DLSE) ("Labor Commissioner's Office")
  - Enforces prevailing wage and apprenticeship laws
- Division of Apprenticeship Standards (DAS)
  - Administers apprenticeship laws, programs, and standards
  - Approves apprenticeship programs

#### Department of Industrial Relations

#### **Quick Links**

- LETF Home
- Report a labor law violation
- Report a workplace hazard to Cal/OSHA
- File a wage claim
- Know my employment rights
- Know my rights as an injured worker
- Get workplace postings
- Find prevailing wage determinations

#### Also of Interest

- Industrial Relations databases
- Subscribe to a distribution list
- Work for DIR
- Do business with DIR

#### Other Resources

- California Labor & Workforce Development Agency
- Employment Development Department
- U.S. Dept. of Labor





### What exactly is the prevailing wage?

























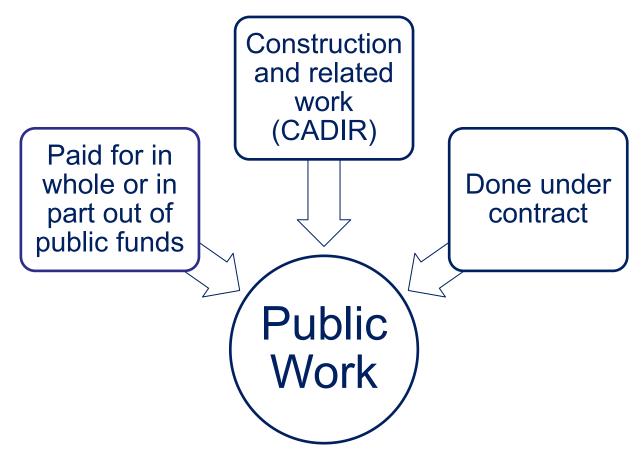
### What is a coverage determination?

- The DIR Director has the power to determine that a project or a type of work is public work through issuing what is known as a coverage determination.
- The administrative process consists of an initial coverage determination and a final determination on administrative appeal.

Section 1773.5 and Cal. Code Regs., Title 8, Sections 16001-16002.5







Standard definition of "public works."

Prevailing wages are required unless an exception applies.

Apprentices must be hired in a specified ratio unless an exception applies.





## Labor Code Section 1720(a)(1)

- **C-**onstruction (includes preconstruction *and* post construction)
- A-Iteration
- D-emolition
- I-nstallation
- R-epair

Labor Code section 1771, 8 CCR 16000

Maintenance





### Paid for in whole or in part out of public funds

(Labor Code 1720(b))

- 1. The payment of money or the equivalent of money . . . directly to or on behalf of the public works contractor, subcontractor, or developer.
- 2. Performance of construction work . . . in execution of the project.
- 3. Transfer . . . of an asset of value for less than *fair market price.*





### Paid for in whole or in part out of public funds

(Labor Code 1720(b))

- 4. Fees, costs, rents, insurance or bond premiums, loans, interest rates, or other obligations that would normally be required in the execution of the contract, that are paid, reduced, charged at *less than fair market value*, waived, or forgiven . . . .
- 5. Money loaned . . . that is to be repaid on a contingent basis.

6. Credits that are applied . . . against repayment obligations . . . .

## Case Study



Hesperia sold red section to developer for \$101k

Hesperia built parking lot on yellow section

Hesperia gave \$101k to developer after theater was built

Hesperia provided \$1.8M in forgivable loans

Hesperia waived interest on loans in case of default



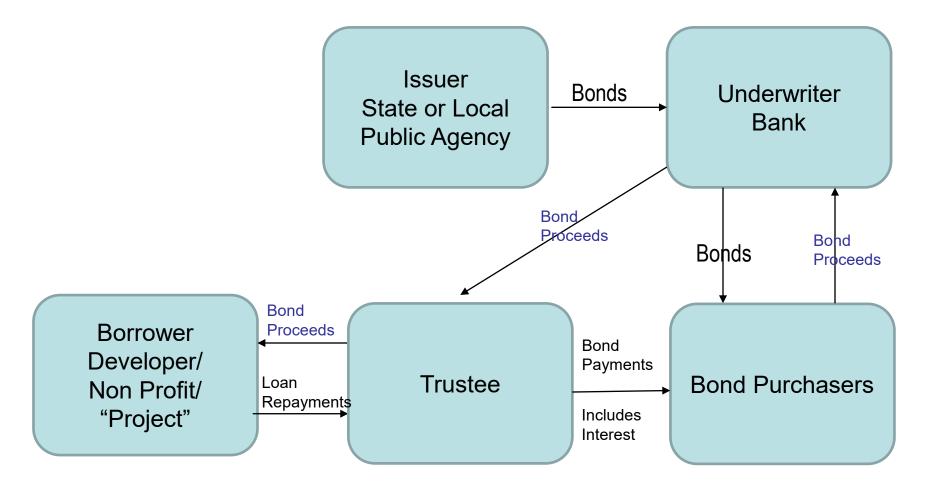


- For purposes of the prevailing wage law, public funds **do not** include:
- Proceeds from Conduit Revenue Bonds
  - Usually available to build schools, hospitals, and housing.
  - But see 1720.8 (charter schools) and 1720.9 (general acute care hospitals).
- Low Income Housing Tax Credits
  - ➤ LIHTC usually allocated by the CTCAC.





## **Conduit Revenue Bonds**







## Other definitions of "public work"

- Section 1720(e) [Work on electric transmission system]
- Section 1720.2 [Private construction leased to public entity]
- Section 1720.3 [Off-haul of refuse]
- Section 1720.6 [Private renewable energy projects on public property]
- Section 1720.7 [Work done on general acute care hospitals]
- Section 1720.8 [Work done on charter schools]
- Section 1720.9 [Hauling of ready-mixed concrete]





# Tenant Improvements Paid for by Private Landlord

Private Office Building with 100,000 total sq. ft.

City of Sacramento 60,000 sq. ft.

Tenant improvements done by the private landlord before the City even signs a lease.

Tenant improvements are done according to the City's specs. Lease is then signed.





## Section 1720(c)(2) exception

- the public improvement work is required as a condition of regulatory approval;
- 2) the project is an otherwise private development;
- 3) the public entity must not contribute more money, or the equivalent of money, to the overall project than is required to construct the public improvement work; and
- 4) the public entity must not maintain any proprietary interest in the overall project.





# GIANTCORP DEVELOPMENT

Private

Development

**Project** 

Street Required as Condition of Regulatory Approval Cost \$10M, Public Subsidy, \$11M





## Section 1720(c)(3) exception

 So-called "de minimis exception" applies when a public entity provides a public subsidy to an otherwise private development project that is "de minimis" in the context of the project.

## Changes on July 1, 2021 (**AB 2231**)

- De minimis if it is both less than \$600,000 and less than 2 percent of the total project cost.
- For projects that consist entirely of single-family dwellings, de minimis is merely less than 2 percent of total project cost.
- Not applicable to projects advertised for bid/awarded before 7/1/21





## 1720(c)(3) – Does the Exception Apply?

## Mixed-use Project Costs \$30.5 million

- ☐ The State provides a grant equal to 2% of the project cost. (\$610,000)
- ☐ Project is advertised for bid on May 30, 2021
- ☐ Project is awarded on July 4, 2021.

Project Advertised May 30, 2021

Project Awarded July 4, 2021





## Section 1720(c)(5)(e) exception

## Affordable Housing Project (20-40-80)

- 1) At least 40% of the units
- Made Available to Households Making No More than 80% of the Area Median Income
- 3) These restrictions are in place for at least 20 years and
- 4) Only form of public funds is a below market interest rate loan





## 1720(c)(5)(E) – Does the Exception Apply?

Affordable Housing Project has 100 units.

- □ 20 units for families making no more than 80% of the AMI.
- ☐ 15 units for families making no more than 60% of the AMI.
- ☐ 5 units for families making no more than 50% of the AMI.
- □ 60 market-rate units.
- ☐ Affordability restrictions are in place for 55 years.

Project receives LIHTCs, proceeds from conduit revenue bonds, commercial bank loans, and a 65-year loan from County for 1% interest.





### Miscellaneous Exceptions

- Section 1720.4 (Volunteers or Conservation Corps)
- ➤ Section 1720.5 (Graffiti Removal Work in the City of Los Angeles Done by a Community-Based Organization Under Certain Circumstances)
- > 8 CCR 16000 (Janitorial, Custodial, Security Guards)





## New Laws 2022

AB 1023: Penalties for failure to submit eCPRs

AB 140: New Strategic Enforcement Unit to boost enforcement of Labor Code on publicly funded projects





## **Select Bills**

AB 1851: Hauling of materials for grading/paving/fill

AB 1886: Street sweeping

AB 1717: Fuel reduction

AB 1727: Small business contractor registration

SB 954: eCPRs (Taft Hartley and LMCCs)

SB 1004: Apprentice bid preference

AB 2463: Volunteer/CCC exception (extend)

SB 1412: Prequal for STW/lawsuit to compel AB compliance





## Office of the Director – Legal Unit Public Works Inquiries

PWCoverage@dir.ca.gov

Home

Labor Law

State of California

Cal/OSHA - Safety & Health

Workers' Comp

Self Insurance

Apprenticeship

Director's Office

Board:

Department of Industrial Relations (DIR)

### **Public Works**

### **Useful Links**

- ➤ DIR's Public Works Home Page
  - http://www.dir.ca.gov/Public-Works/PublicWorks.html
- The Director's Public Works Coverage Determinations
  - http://www.dir.ca.gov/OPRL/PubWorkDecision.htm
- The Director's General Prevailing Wage Determinations
  - http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm
- DLSE's Public Works Manual
  - http://www.dir.ca.gov/dlse/PWManualCombined.pdf
- California Labor Code
  - http://leginfo.legislature.ca.gov/faces/codes.xhtml
- California Code of Regulations
  - http://www.oal.ca.gov/



## DISCLAIMER

### California Department of Industrial Relations

The following presentation is intended to summarize relevant portions of existing law in the Labor Code and California Code of Regulations, but those code sections, as interpreted by the courts, will govern actual enforcement. The information contained in this presentation is a general overview of existing law or regulation. Any opinions expressed are solely those of the author/speaker and are not necessarily the official position of the Department of Industrial Relations (DIR), its Director, or any related public entity. The information in this presentation is not intended as legal advice, and does not guarantee any outcome in specific enforcement or coverage proceedings within the jurisdiction of DIR.



# Our Goals



PRE-QUALIFICATION OF CONTRACTORS

LABOR COMMISSIONER MODEL QUESTIONNAIRE



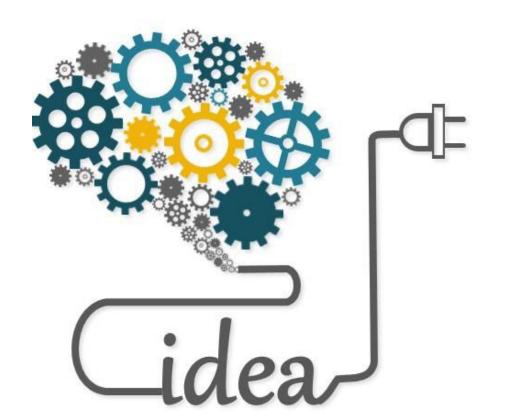
## **POLL QUESTION**



As an Awarding Body, do you currently have a Pre-Qualification of Contractors system in place?

- a) Yes
- b) No





"Individual commitment to a group effort -- that is what makes a team work, a company work, a society work, a civilization work."

- Vince Lombardi



## Why Pre-Qualify Contractors?



### **Purpose**

- Contractors seeking to BID on Public Works Projects can be Pre-Qualified (PCC 20101)
- Stops Bad Actors BEFORE a contract is awarded and stops repeat violators from continuing to profit from wage theft

### **Importance**

Levels the Playing Field for Law Abiding Contractors

### Value

- Allows Awarding Bodies to be Proactive
- Contracts are awarded only to Responsible Bidders
- Avoids Awarding Body
   Citations and Debarment

## **POLL QUESTION**



What is a benefit of using the Labor Commissioner's Model Questionnaire?

- a) It is a complete pre-qualification packet that meets all the requirements of the law
- b) It can be easily adopted and customized to an awarding bodies needs
- It can be used to enhance whatever pre-qualification system an awarding body already has in place
- All of the above



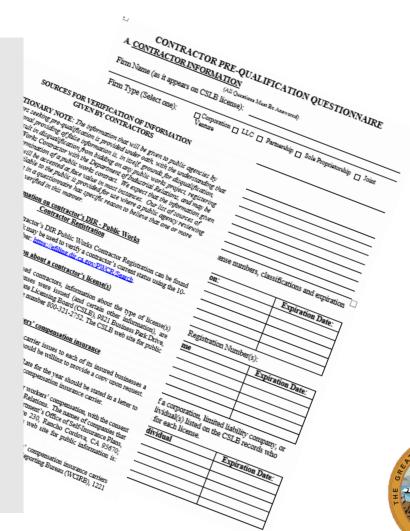
## Labor Commissioner's Model Questionnaire

**EASY AS 1-2-3** 

#### INSTRUCTIONS FOR AWARDING BODIES

Contractors who wish to be pre-qualified must submit a completed pre-qualification questionnaire to the awarding body for review. Contractors are required to provide any additional information and/or

### TABLE OF CONTENTS PAGE INTRODUCTION AND OVERVIEW OF THE 1999 LAW AND ITS APPLICATION I. Important Provisions of The 1999 Law. II. Role of the Department of Industrial Relations. III. An Overview of The Documents In This Package IV. Appeal Procedure.. V. Application of The Public Records Act .. VI. What Are the Law's Provisions Regarding Pre-qualification of Subcontractors... INSTRUCTIONS FOR AWARDING BODIES ... MODEL PRE-QUALIFICATION QUESTIONNAIRE. A. Contractor Information . B. Current Organization and Structure... C. Essential Criteria Questions. D. Pre-qualification Criteria Questions... Criminal Matters and Civil Suits... Occupational Health and Safety Compliance Prevailing Wage and Apprenticeship Compliance. E. Project References .. SCORING WORKSHEET MODEL INTERVIEW QUESTIONS .... REQUEST FOR PRE-QUALIFICATION OF BIDDERS COMMENCING WITH FORTHCOMING PUBLIC WORK BID . ANNOUNCEMENT OF PRE-QUALIFICATION PROCEDURES AND OPEN DATES FOR ANNUAL PRE-QUALIFICATION SOURCES FOR VERIFICATION OF INFORMATION GIVEN BY CONTRACTORS



## LABOR COMMISSIONER'S MODEL QUESTIONNAIRE

### Contractor

Completes the Pre-Qualification questionnaire

Submits the Pre-Qualification Questionnaire and financial statements

Provides any additional information/documentation

Awarding Body Reviews Section C
"Essential Criteria"

Contractor is immediately **DISQUALIFIED** If:

Any answer to questions 1 through 6 is "NO"

Any answer to questions 7 through 13 is "YES"

Awarding Body Reviews Section D
"Prequalification Criteria Questions"

Contractor is <u>PRE-QUALIFIED</u> if:
All of the Contractor's responses to questions
1 through 21 are "0"

SUBMIT STEP

REVIEW STEP 2

PRE-QUALIFY STEP 3



## **POLL QUESTION**



Can a contractor that is not registered with DIR as a public works contractor for the current fiscal year be pre-qualified?

- a) Yes
- b) No



#### C. ESSENTIAL CRITERIA OUESTIONS

- 1. Does your firm possess a valid and current California Contractor's or other professional license as required by law for the project or projects for which it intends to submit a bid?
- 2. Is your firm registered with DIR as a Public Works Contractor for the current fiscal year?
- 3. Does your firm have a liability insurance policy with a policy limit of at least \$1,000,000 per occurrence and \$2,000,000 aggregate?
- 4. Does your firm have current workers' compensation insurance policy as required by the Labor Code or is your firm legally selfinsured pursuant to Labor Code section 3700 et. seq.?
- 5. Have you attached your firm's latest copy of reviewed or audited financial statements with accompanying notes and supplemental information? \*

NOTE: Financial statements that are not either reviewed or audited are not acceptable. A letter verifying availability of a line of credit may also be attached; however, it will be considered as supplemental information only, and is not a substitute for the required financial statements.

6. Have you attached a notarized statement from an admitted surety insurer (approved by the California Department of Insurance) authorized to issue bonds in the State of California, which states that: (a) your current bonding capacity is sufficient for the project for which you seek pre-qualification if you are seeking pre-qualification for a single project; or valid for a year if you are seeking pre-qualification valid for a year; and (b) your current available bonding capacity? \*\*

NOTE: Notarized statement must be from the surety company, not an agent or broker.

#### Circle Answer

Yes No



Yes No

Yes No

Yes No

Yes No







#### F. CERTIFICATION

Questionnaires submitted by corporations must be signed with the legal name of the corporation, followed by the name of the state of incorporation and by the signature and designation of the chairman of the board, president or any vice president, and then followed by a second signature by the secretary, assistant secretary, the chief financial officer or assistant treasurer. All persons signing must be authorized to bind the corporation in the matter. The name of each person signing shall also be typed or printed below the signature. Satisfactory evidence of the authority of each officer signing on behalf of a corporation shall be furnished.

Questionnaires submitted by partnerships must furnish the full name of all partners and must be signed in the partnership name by a general partner with authority to bind the partnership in such matters, followed by the signature and designation of the person signing. The name of the person signing shall also be typed or printed below the signature.

#### Each person signing below makes the following representations under penalty of perjury:

The submitter of the foregoing answers to the questionnaire has read the same and the matters stated therein are true to the best of his or her own personal knowledge. This information is provided for the purpose of qualifying to bid on the Project, and any individual, company or other agency named herein is hereby authorized to supply the awarding body with any information necessary to verify the prospective bidder's statements. By signing below, the submitter and the named contractor hereby grant permission to the [Public Entity] to contact any or all of the above listed persons or entities to confirm facts or otherwise investigate the above facts and issues.

The submitter understands that any statement which is proven to be false shall be grounds for immediate disqualification from bidding on the Project. The submitter whose signature appears below represents and warrants that he or she has authority to bind the named contractor.

ontractor Entity N	ame), declare i			ne laws of the State of California estionnaire is true, full, and	
orks project, regist	ering as a Publ		with the De	ation from bidding on any public epartment of Industrial Relations,	
ecuted on this:	d	av of	at		
	(Date)	ay of(Month/Year	)	(City / State)	
Name of Co					

(Name) the undersioned am the





# Important Notes

### Be Proactive

 Purpose of pre-qualifying is to make sure bad actors are stopped BEFORE a contract is awarded and repeat violators do not profit from wage theft

### Level the Playing Field for Law Abiding Contractors

 Labor Commissioner Model Questionnaire is a complete pre-qualification packet that can be easily adopted and customized to an Awarding Bodies needs AND can be used to enhance whatever system an Awarding Body already has in place

Avoid Awarding Body Citations and Debarment



## WWW.DIR.CA.GOV



Public works in general means:

- Construction, alteration, demolition, installation, or repair work done under contract and paid in whole or in part out of public funds.
- It can include preconstruction and post-construction activities related to a public works project.
- For a full definition of public works refer to Labor Code section 1720.

Anyone working on a public works project must be paid prevailing wages as determined by DIR. Projects of \$30,000 or more must meet DIR's apprenticeship requirements. Failure to comply with public works requirements can result in civil penalties, criminal prosecution, or both.

Contractors, and others who work on public works projects Awarding Bodies, public agencies or project owners

### Resources

- · Public Works Pre-Qualification of Contractors
- · Apprenticeship Requirements
- · Certified Payroll Reporting
- · Enforcement of Public Works Law
- · File a Public Works Complaint
- · Labor Compliance Programs
- Prevailing Wage Requirements
- More Resources

### Have Questions?

### Contact Us:

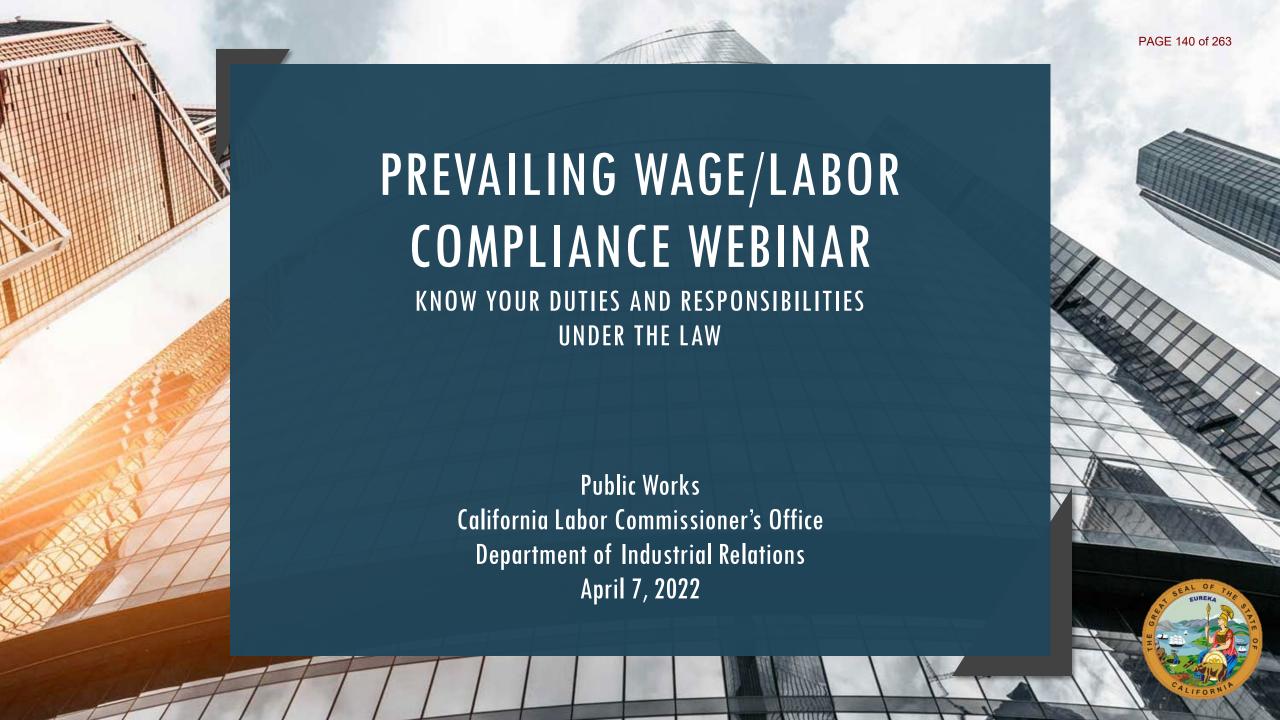
Publicworks@dir.ca.gov

## Subject Line:

Pre-Qualification of Contractors







## DISCLAIMER

### California Labor Commissioner's Office

The following presentation is intended to summarize relevant portions of existing law in the Labor Code and California Code of Regulations, but those code sections, as interpreted by the courts, will govern actual enforcement. The information contained in this presentation is a general overview of existing law or regulation. Any opinions expressed are solely those of the author/speaker and are not necessarily the official position of the Department of Industrial Relations (DIR), its Director, or any related public entity. The information in this presentation is not intended as legal advice, and does not guarantee any outcome in specific enforcement or coverage proceedings within the jurisdiction of DIR.





## PROJECT REGISTRATION

PROVIDE ELECTRONIC NOTICE TO DIR OF ALL PUBLIC WORKS CONTRACTS WITHIN <u>30 DAYS</u> OF THE AWARD, BUT IN NO EVENT LATER THAN THE FIRST DAY IN WHICH A CONTRACTOR HAS WORKERS EMPLOYED UPON THE PUBLIC WORK. (LC §1773.3) \*

<sup>\*</sup> Does not apply to projects of \$25,000 or less when the project is for construction, alteration, demolition, installation, or repair work or for projects of \$15,000 or less when the project is for maintenance work



## POLL QUESTION #1

### PROJECT REGISTRATION

Which of the following projects does <u>not</u> need to be registered, according to DIR requirements?

- A contract of \$30,000 for installation work
- A contract of \$26,000 for demolition work
- A contract of \$10,000 for maintenance work



## POLL QUESTION #1 - ANSWER

#### PROJECT REGISTRATION

Which of the following projects does <u>not</u> need to be registered, according to DIR requirements?

- A contract of \$30,000 for installation work
- A contract of \$26,000 for demolition work
- A contract of \$10,000 for maintenance work

Registration requirements do not apply to projects of \$25,000 or less when the project is for construction, alteration, demolition, installation, or repair work or for projects of \$15,000 or less when the project is for maintenance work



#### https://www.dir.ca.gov/Public-Works/PublicWorks.html



#### Public works in general means:

- Construction, alteration, demolition, installation, or repair work done under contract and paid in whole or in part out of public funds.
- · It can include preconstruction and post-construction activities related to a public works project.
- For a full definition of public works refer to Labor Code section 1720.

Anyone working on a public works project must be paid prevailing wages as determined by DIR. Projects of \$30,000 or more must meet DIR's apprenticeship requirements. Failure to comply with public works requirements can result in civil penalties, criminal prosecution, or both.

Contractors, and others who work on public works projects Awarding Bodies, public agencies or project owners

Public Works Prevailing Wage Training for Contractors and Awarding Bodies

#### Resources

- · Public Works Pre-Qualification of Contractors
- · Apprenticeship Requirements
- · Certified Payroll Reporting
- · Enforcement of Public Works Law
- · File a Public Works Complaint
- Labor Compliance Programs
- Prevailing Wage Requirements
- More Resources



Find Public Works Projects

Find Public Works Contractors

Find Payroll Records



Contractor Registration

**Project Registration** 



en Español



#### https://www.dir.ca.gov/pwc100ext/LoginPage.aspx



Home : External Lookup

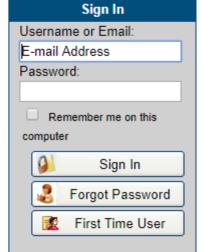
#### Public Works Projects Registration (PWC-100) for all Awarding Agencies

Welcome to the PWC 100 form online application page. The PWC 100 form should be completed by the awarding body. The completion and the submission of this form fulfills the required public works project award notification as required by Labor Code sec. 1773.3 (replacing former DAS-13 notification) and 8 Cal. Code Reg. sec. 16451(a).

An awarding body or body awarding the contract means department, board, authority, officer or agent awarding a contract for public work. In most cases the awarding body is a unit of state or local government, such as a city, county, school district, water district, special district, or a state agency. However, in some cases the body awarding the contract may be a private entity that uses public funds for a public works construction project.

**Browser Support** 

Please keep your login and password since you may only register once.



To create an account please select the First Time User button above. Note that user ID and password are case sensitive.



Home : Awards that Need to be Submitted : Project Information : Project Information 2 : Contractor Information  Contractor Information  Contractor Information  Update Account Logout							
Project	Manage	er					
Email A	ddress*		First Name*	/II Last Name* Tit	tle*	Work Phone*	
mail@n	nail.com		Jane	Smith	roject Ma	anager 123 - 456	- 7899 Ex
Genera	I Contra	ctor 1					
	Primary	PWCR	Name	Address		Email	Classification
Delete Edit	0	10000000000	XYZ CONTRACTORS INC.	1234 PW STREET LOS ANGELES, CA 9007	1	XYZ@GMAIL.COM	CARPENTERS
Add Contractor							
Save Submit Delete Project							



#### SEARCHING FOR A PUBLIC WORKS PROJECT



Public works in general means:

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Contractors, and others who work on public works projects Awarding Bodies, public agencies or project owners

**Public Works Prevailing Wage Training for Contractors and Awarding Bodies** 

#### What's New

en Español

#### Resources

- · Public Works Pre-Qualification of Contractors
- · Apprenticeship Requirements
- Certified Payroll Reporting
- · Enforcement of Public Works Law
- · File a Public Works Complaint
- · Labor Compliance Programs
- Prevailing Wage Requirements
- More Resources

#### search

Find Public Works Projects

Find Public Works Contractor

Find Payroll Records

#### **Registration**

Contractor Registration
Project Registration



#### https://www.dir.ca.gov/pwc100ext/ExternalLookup.aspx

me i Search PWC-100			
ublic Search Utility - You may search	by DIR Project ID or enter at lea	ast <u>one</u> search criteria to displ	lay projects matching your selections.
DIR Project ID			
		Sea	arch
OR			
Awarding Body Name			
Name of Project			
Name of Project			
Name of Contractor		PWCR Number	r
Name of Subcontractor		PWCR Number	r
First Advertised Bid Date	Contract Amount	Project Award Date	Estimate Start Date
V	V	V	<u> </u>
Estimated Completion Date	Classification of Workers:		
	_		
Physical Address   Address	○ Location		



#### Division of Apprenticeship Standard / Division of Labor Standards Enforcement

Home Labor Law Cal/OSHA - Safety & Health Workers' Comp Self Insurance Apprenticeship Director's Office Boards

Home : Search PWC-100 : Search Results

#### **SEARCH RESULTS - 16 records found**

Click the DIR Project ID to see more information about the project.

ID	Awarding Body	Project Name	Site Address	Dates	Classification	County
Project Number: Bid 7582 DIR Project ID: 123456	Sunshine County	Sunshine H.S. Gym Repair	1213 Sunny Lane Sunshine, Ca 93312	Advertised: 03/14/2019 Award: 04/04/2019 Est. Start: 07/01/2019	LABORERS CEMENT MASONS OPERATING ENGINEERS	RIVERSIDE
		<b>Amount:</b> \$524,409.59		Est. Comp: 08/30/2019		
	Contractor			Sub Con	tractor	
PWCR/CSLB/Lic	Name		PWCR/CSLB/Lic	Name		
Project Number: Puchase Req Y195478 DIR Project ID: 789101	Sunshine County	Sunshine Park Community Pool Amount: \$3,459,687.33	1031 Main St. Sunshine, Ca 93312	Advertised: 01/07/2019 Award: 02/14/2019 Est. Start: 04/01/2019 Est. Comp: 11/22/2019	LABORERS CEMENT MASONS OPERATING ENGINEERS	RIVERSIDE
	Contractor			Sub Con	tractor	
PWCR/CSLB/Lic			PWCR/CSLB/Lic	Name		



ENSURE THAT PUBLIC WORKS PROJECTS ARE NOT SPLIT OR SEPARATED INTO SMALLER WORK ORDERS OR PROJECTS FOR THE PURPOSE OF EVADING THE APPLICABLE PROVISIONS OF LC §1771. (TITLE 8, CCR § 16100)



### **ENSURE CONTRACTORS ARE REGISTERED**

A CONTRACTOR OR SUBCONTRACTOR MUST BE REGISTERED WHEN BIDDING, LISTED IN A BID PROPOSAL, OR ENGAGED IN THE PERFORMANCE OF ANY CONTRACT FOR PUBLIC WORK. (LC §§1725.5 &1771.1) \*

<sup>\*</sup> Does not apply to projects of \$25,000 or less when the project is for construction, alteration, demolition, installation, or repair work or for projects of \$15,000 or less when the project is for maintenance work



#### https://cadir.secure.force.com/ContractorSearch

#### Public Works Contractor Registration Search

Enter at least one criteria to display registered public works contractor(s) matching your selections.

Note: Search results will display all of the public works contractor registrations, both current and expired. Make sure a proper registration fiscal year is selected when performing a search.

Input Label		From Date:	To Date:	
Legal name, CSLB number, DBA, R	egistration number	mm/dd/yyyy	mm/dd/yyyy	
County		City		
Court Doort				
Search Reset				
Crafta (Calaat	Registrations			
Crafts (Select	Registrations			
all that apply)	Search Results:		Previous Next	
Asbestos				
<ul><li>Boilermaker- Blacksmith</li></ul>	Print PDF 🖨 Export 🕹		Add all to my list  My List (0)→	



Contractor Information Registration History Effective Date **Expiration Date** Legal Entity Name A+ Construction 03/04/19 06/30/19 Legal Entity Type Corporation Status Active Registration Number PW-LR-1000469801 Registration effective date 03/04/19 Registration expiration date 06/30/19 Malling Address 1 Address St Anytown 95555 CA United States of America Physical Address 1 Address St. Anytown 95555 CA United States of America **Emall Address** Trade Name/DBA Mike's Construction

#### Legal Entity Information

Corporation Number:

License Number (s) CSLB:1234567 CSLB:1234567 CSLB:1234567

Federal Employment Identification Number:

President Name: M. J. Poppins

Vice President Name:

Treasurer Name: Secretary Name: CEO Name:

Agent of Service Name:

Agent of Service Mailing Address: CA United States of America

Worker's Compensation

Do you lease employees through Professional Employer Organization (PEO)?: No

 $\label{provide} \mbox{Please provide your current worker's compensation insurance information below:}$ 

PEO PEO PEO PEO PEO PEO InformationName Phone Email

Insured by Carrier

 Policy Holder Name:
 M. J. Poppins

 Insurance Carrier:
 Aetna

 Policy Number:
 8790000

 Inception date:
 01/01/19

 Expiration Date:
 01/01/20



PAGE 155 of 263

## POLL QUESTION #2

#### **CONTRACTOR REGISTRATION**

As an awarding body member, you know that contractors must be registered when bidding, being awarded, and working on public works projects.

Using the contractor registration histories and provided dates on the next slide, which contractor was correctly registered through the entire process?



## POLL QUESTION #2

Registration History —  Contractor A			
Effective Date	Expiration Date		
8/10/2021	6/30/2022		
7/1/2020	6/30/2021		
1/1/2020	6/30/2020		

	Registration History – Contractor B			
1	Effective Date	Expiration Date		
	7/1/2021	6/30/2022		
	9/1/2020	6/30/2021		
	10/15/2019	6/30/2020		

Registration History — Contractor C			
Effective Date	Expiration Date		
7/15/2021	6/30/2022		
6/25/2021	6/30/2021		
6/1/2020	6/30/2020		

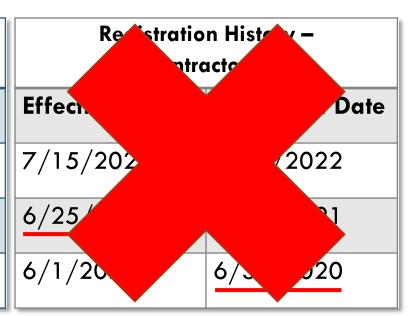
Bid Date: 6/20/2021

Award Date: 7/10/2021

## POLL QUESTION #2 - ANSWER

Registration History – Contractor A			
Effective Date	Expiration Date		
8/10/2021	6/30/2022		
7/1/2020	6/30/2021		
1/1/2020	6/30/2020		

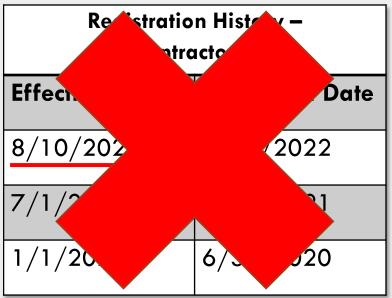
Registration History – Contractor B			
Effective Date	Expiration Date		
7/1/2021	6/30/2022		
9/1/2020	6/30/2021		
10/15/2019	6/30/2020		



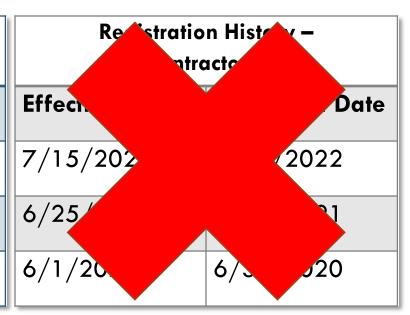
Bid Date: 6/20/2021

Award Date: 7/10/2021

## POLL QUESTION #2 - ANSWER



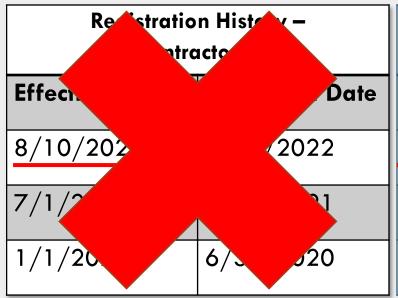
	Registration History – Contractor B		
1	Effective Date	Expiration Date	
1	7/1/2021	6/30/2022	
	9/1/2020	6/30/2021	
	10/15/2019	6/30/2020	



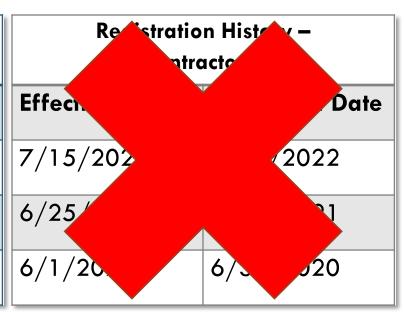
Bid Date: 6/20/2021

Award Date: 7/10/2021

## POLL QUESTION #2 - ANSWER



Registration History – Contractor B			
Effective Date	Expiration Date		
7/1/2021	6/30/2022		
9/1/2020	6/30/2021		
10/15/2019	6/30/2020		



Bid Date: 6/20/2021

Award Date: 7/10/2021

## NOTICE REQUIREMENTS

INCLUDE THE NOTICE OF THE REQUIREMENT DESCRIBED IN LC §1771.1(A) & LC §1771.4(A)(1) IN ALL BID INVITATIONS AND PUBLIC WORKS CONTRACTS.

 A bid shall not be accepted nor any contractor or subcontract entered into without proof of the contractor or subcontractor's current registration to perform public work. (LC §1771.1(b))

• The call for bids and contract documents shall specify that the project is subject to compliance monitoring and enforcement by the Department of Industrial Relations. (LC §1771.4(a)(1))

OBTAIN PREVAILING
WAGE RATES FROM DIR
(LABOR CODE SECTIONS
1773, 1773.2, AND
1773.4)



POST OR REQUIRE **CONTRACTORS TO POST JOBSITE NOTICES ON PUBLIC WORKS** REQUIREMENTS (LC §1771.4(A)(2))



## ENSURE THAT PUBLIC WORKS CONTRACTORS PAY PREVAILING WAGES AND ARE IN COMPLIANCE WITH PUBLIC WORKS LAWS AND REPORT ANY SUSPECTED VIOLATIONS TO THE LABOR COMMISSIONER (LC §1726; TITLE 8, CCR §16100)

\*Except for public works projects of one thousand dollars (\$1,000) or less. (LC §1771)



WITHHOLD AND RETAIN ALL AMOUNTS REQUIRED TO SATISFY THE CIVIL WAGE AND PENALTY ASSESSMENT (LC §1727(A))





## **LABOR CODE §1773.3**

PENALTIES SHALL BE ASSESSED AGAINST AWARDING BODIES FOR THE FOLLOWING (LC § 1773.3(C)(1)):

- Failing to timely submit project registration information;
- Entering into a contract with an unregistered contractor; or
- Allowing an unregistered contractor to engage in the performance of any public work

#### **Civil Penalty**

Subject to penalties of \$100 for each day in violation of either requirement, not to exceed an aggregate penalty of \$10,000 per project



## LABOR CODE §1773.3

PENALTIES SHALL ALSO BE ASSESSED AGAINST AN AWARDING BODY WHEN (LC §1773.3(D)) FINAL PAYMENT WAS MADE AND IT IS LATER DISCOVERED THAT AN UNREGISTERED CONTRACTOR WORKED ON THE PROJECT

#### **Civil Penalty**

Subject to penalties of \$100 for each full calendar day of noncompliance, for a period of up to 100 days, for each unregistered contractor or subcontractor.



## POLL QUESTION #3

#### PENALTY CALCULATION

The Labor Commissioner's Office investigates a project and determines that there were two subcontractors, Contractor A and Contractor B, who performed work for ten days each without being registered.

According to Labor Code 1773.3, how much in penalties can be assessed against the awarding body?



## POLL QUESTION #3 - ANSWER

#### PENALTY CALCULATION

2 unregistered subcontractors x 10 days x \$100 = \$2000

LC 1773.3: Subject to penalties of \$100 for each full calendar day of noncompliance, for a period of up to 100 days, for each unregistered contractor or subcontractor.



## AWARDING BODY "DEBARMENT" (LC §1773.3(F)):

"WHENEVER THE LABOR COMMISSIONER DETERMINES THAT AN AWARDING AGENCY HAS WILLFULLY VIOLATED THE REQUIREMENTS OF THIS SECTION OR CHAPTER WITH RESPECT TO TWO OR MORE PUBLIC WORKS CONTRACTS OR PROJECTS IN ANY 12-MONTH PERIOD, THE AWARDING AGENCY SHALL BE INELIGIBLE TO RECEIVE STATE FUNDING OR FINANCIAL ASSISTANCE FOR ANY CONSTRUCTION PROJECT UNDERTAKEN BY OR ON BEHALF OF THE AWARDING AGENCY FOR ONE YEAR..."



# LABOR COMMISSIONER SHALL ISSUE STOP ORDER WHEN UNREGISTERED CONTRACTOR PERFORMS WORK (LC §1771.1(J))

- Stop order prohibits use of unregistered contractor or subcontractor until registered
- Affected worker of unregistered contractor entitled to regular hourly pay of prevailing wage rate (not to exceed 10 days) for work stoppage
- Does not apply to other registered contractors or subcontractors on same public works project



# PRECAUTIONARY LEGAL NOTICE TO AWARDING BODIES

THE LABOR COMMISSIONER WANTS TO REMIND ALL AWARDING BODIES THAT ARTICLE 2 ALSO INCLUDES LC §1777, WHICH WAS ENACTED IN 1937 AND REMAINS THE LAW TODAY. SECTION 1777 ESTABLISHES A CRIMINAL PENALTY (MISDEMEANOR) AGAINST "ANY OFFICER, AGENT, OR REPRESENTATIVE OF THE STATE OR OF ANY POLITICAL SUBDIVISION WHO WILLFULLY VIOLATES ANY PROVISION" OF ARTICLE 2.





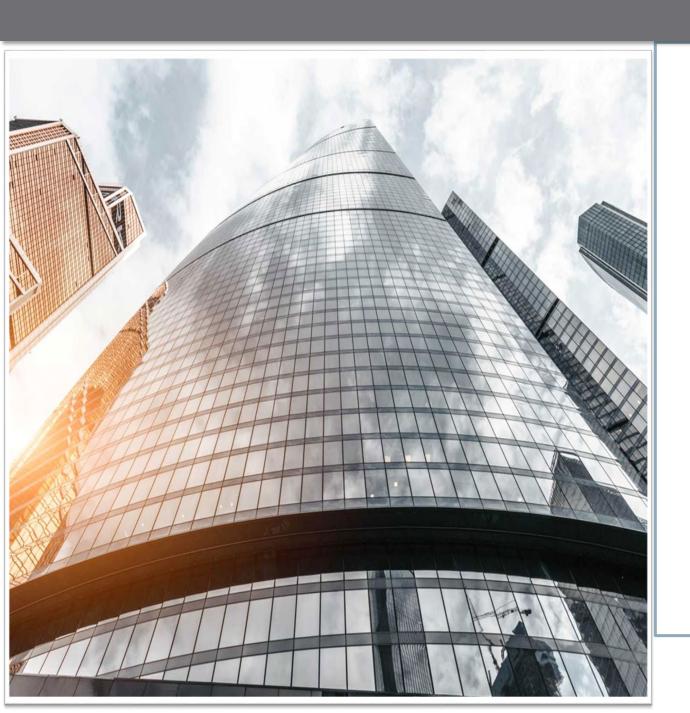


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# What is a Skilled and Trained Workforce? ("STW")

Public Contract Code §2601



#### WHAT IS A "SKILLED AND TRAINED WORKFORCE"?

Public Contract Code §2601

A STW meets <u>ALL</u> of the following conditions:

- <u>ALL</u> workers performing work in an apprenticeable occupation in the building and construction trades are <u>EITHER</u>:
  - Skilled Journeypersons OR
  - DAS-Registered Apprentices
- Graduation Percentage Requirement:
  - 30% 60% of <u>ALL</u> Skilled Journeypersons must be **graduates of apprenticeship program**.
    - Graduation percentage requirement varies depending on specific craft.
    - Graduation percentage requirement can be met by counting **EITHER**:
      - Number of Skilled Journeypersons employed (head count) OR
      - Number of hours worked by Skilled Journeypersons (hours worked by trade)



#### WHO IS A "SKILLED JOURNEYPERSON"?

Public Contract Code §2601(e)

## A Skilled Journeyperson is a worker who EITHER:

- Graduated from a DAS-approved apprenticeship program for the applicable occupation or a DOL-approved apprenticeship program outside California OR
- Has at least as many hours of on-the-job experience in the applicable occupation as would be required to graduate from a DAS-approved apprenticeship program
- Workers that have not graduated from an approved apprenticeship program or do not have the required on the job training hours are not considered skilled journeypersons and should not be allowed to work on skilled and trained workforce requirement projects.



Skilled Journeyperson

Graduated DAS-approved apprenticeship program OR
Graduated DOL-approved apprenticeship program

On the job (OJT) experience equal to number of hours required to graduate DASapproved apprenticeship program

Count toward the 30-60% requirement



#### SKILLED AND TRAINED WORKFORCE

A skilled and trained workforce includes all of the following except?

- A. DIR registered apprentices
- · B. Journeymen who have graduated from an approved apprenticeship program
- C. Journeymen who have the number of on the job hours needed to graduate from an apprenticeship program
- D. Unregistered apprentices or Journeymen with no on the job training

#### SKILLED AND TRAINED WORKFORCE

A skilled and trained workforce includes all of the following except?

- A. DIR registered apprentices
- · B. Journeymen who have graduated from an approved apprenticeship program
- C. Journeymen who have the number of on the job hours needed to graduate from an apprenticeship program
- <u>D. Unregistered apprentices or Journeymen with no on</u> the job training

#### SKILLED AND TRAINED WORKFORCE

A skilled journeyperson who has worked the number of on the job hours required to graduate from an approved apprenticeship program may be counted in the graduation percentage requirement?

- · A. Yes
- B. No
- · C. Not Sure

#### SKILLED AND TRAINED WORKFORCE

A skilled journeyperson who has worked the number of on the job hours required to graduate from an approved apprenticeship program may be counted in the graduation percentage requirement?

- · A. Yes
- <u>B. No</u>
- · C. Not Sure

STW Apprenticeship Graduation Requirement



Public Works

#### Graduation Percentage Requirement

% of journeypersons who must be graduates of apprenticeship program:	Not applicable to work performed by the following trades/occupations:	Authority
30%	Teamster.	Pub. Contract Code §2601 (d)(2)(A)
40%	Acoustical installer, bricklayer, carpenter, cement mason, drywall installer or lather, marble mason, finisher, or setter, modular furniture or systems installer, operating engineer, pile driver, plasterer, roofer or waterproofer, stone mason, surveyor, <b>teamster</b> , terrazzo worker or finisher, and tile layer, setter, or finisher.	Pub. Contract Code §2601 (d)(2)(B)
50%	Same as above. (Including Teamster.)	Pub. Contract Code §2601 (d)(2)(C)
60%	Same as above. (Including Teamster.)	Pub. Contract Code §2601 (d)(2)(D)
	journeypersons who must be graduates of apprenticeship program:  30%  40%	journeypersons who must be graduates of apprenticeship program:  30%  Teamster.  Acoustical installer, bricklayer, carpenter, cement mason, drywall installer or lather, marble mason, finisher, or setter, modular furniture or systems installer, operating engineer, pile driver, plasterer, roofer or waterproofer, stone mason, surveyor, teamster, terrazzo worker or finisher, and tile layer, setter, or finisher.  Same as above. (Including Teamster.)

#### Graduation Percentage Requirement

Period Beginning	Period Ending	Classification	Minimum Graduation Percentage Required	
1/1/2017	12/31/2017	Teamster	0.00%	
1/1/2017	12/51/2017	All Others	30.00%	
	12/31/2018	Teamster	0.00%	
1/1/2018		Acoustical installer, bricklayer, carpenter, cement mason, drywall installer or lather, marble mason, finisher, or setter, modular furniture or systems installer, operating engineer, pile driver, plasterer, roofer or waterproofer, stone mason, surveyor, teamster, terrazzo worker or finisher, and tile layer, setter, or finisher	30.00%	
		All Others	40.00%	
	12/31/2019	Teamster	0.00%	
1/1/2019		Acoustical installer, bricklayer, carpenter, cement mason, drywall installer or lather, marble mason, finisher, or setter, modular furniture or systems installer, operating engineer, pile driver, plasterer, roofer or waterproofer, stone mason, surveyor, teamster, terrazzo worker or finisher, and tile layer, setter, or finisher	30.00%	
		All Others	50.00%	
1/1/2020	N/A	Teamster	0.00%	
		Acoustical installer, bricklayer, carpenter, cement mason, drywall installer or lather, marble mason, finisher, or setter, modular furniture or systems installer, operating engineer, pile driver, plasterer, roofer or waterproofer, stone mason, surveyor, teamster, terrazzo worker or finisher, and tile layer, setter, or finisher	30.00%	
		All Others	60.00%	

Applies to <u>work performed</u> on or after:	% of journeypersons who must be graduates of apprenticeship program:	Not applicable to work performed by the following trades/occupations:
January 1, 2017	30%	Teamster.
January 1, 2018	40%	Acoustical installer, bricklayer, carpenter, cement mason, drywall installer or lather, marble mason, finisher, or setter, modular furniture or systems installer, operating engineer, pile driver, plasterer, roofer or waterproofer, stone mason, surveyor, teamster, terrazzo worker or finisher, and tile layer, setter, or finisher.
January 1, 2019	50%	Same as above. (Including Teamster.)
January 1, 2020	60%	Same as above. (Including Teamster.)

Based on the graduation percentage chart, a project bid on June 1<sup>st</sup>, 2019 using the Carpenter craft would have which graduation percentage requirement for this craft?

- A. 50%
- B. 30%
- C. 40%
- D. 60%
- E. Not Sure

Applies to <u>work performed</u> on or after:	% of journeypersons who must be graduates of apprenticeship program:	Not applicable to work performed by the following trades/occupations:
January 1, 2017	30%	Teamster.
January 1, 2018	40%	Acoustical installer, bricklayer, <u>carpenter</u> , cement mason, drywall installer or lather, marble mason, finisher, or setter, modular furniture or systems installer, operating engineer, pile driver, plasterer, roofer or waterproofer, stone mason, surveyor, teamster, terrazzo worker or finisher, and tile layer, setter, or finisher.
January 1, 2019	50%	Same as above. (Including Teamster.)
January 1, 2020	60%	Same as above. (Including Teamster.)

Based on the graduation percentage chart, a project bid on June 1<sup>st</sup>, 2019 using the Carpenter craft would have which graduation percentage requirement for this craft?

- A. 50%
- <u>B. 30%</u>
- C. 40%
- D. 60%
- E. Not Sure

#### APPRENTICESHIP GRADUATION PERCENTAGE REQUIREMENT

- The graduation percentage requirement may be satisfied by **EITHER** using the **head count** of apprenticeship program graduates or **percentage of hours worked** by apprenticeship program graduates in a particular **calendar month**:
  - The method used to calculate the graduation percentage can be changed month to month based on the contractors workforce on that month and which calculation will allow them to meet the graduation percentage requirement.



#### APPRENTICESHIP GRADUATION PERCENTAGE REQUIREMENT

- Head Count At least the required percentage of the Skilled Journeypersons employed by the contractor or subcontractor to perform work on the contract or project meet the graduation percentage requirement.
  - Example: Graduation percentage requirement 60%
  - Contractor employs 10 Skilled Journeypersons:
    - 6 skilled journeypersons must be graduates of apprenticeship program.
    - 4 skilled journeypersons may have on the job hours.
    - 6 apprenticeship program graduates out of 10 skilled journeypersons = 60% graduation requirement met

Total number of Graduated J/M
Total number of J/M (Graduates+OJT)

% of Graduated J/M



#### APPRENTICESHIP GRADUATION PERCENTAGE REQUIREMENT

- Hours Worked Percentage Count The percentage of hours of work performed by Skilled Journeypersons employed by the contractor or subcontractor on the project, who met the graduation requirement is at least equal to the required graduation percentage.
  - Example: Graduation percentage requirement 60%
  - Hours worked in a month: 100 hours
    - At least 60 hours must be worked by graduates of apprenticeship program to meet requirement.
    - 40 hours may be worked by skilled journeypersons with on the job hours.
    - 60hrs worked by apprenticeship graduates/100hrs worked in total =  $0.6 \times 100 = 60\%$  graduation requirement met.

Total hours performed by Graduated J/M
Total hours performed by J/M (Graduates+OJT)

% of hours performed by Graduated J/M

#### SKILLED AND TRAINED WORKFORCE

	Total Number of Skilled	Number of Skilled Journeypersons	Number of Skilled Journeypersons	Graduation Percentage
Classification	Journeypersons	<b>Graduated From Apprenticeship Program</b>	With On The Job Training	Requirement
Laborer	13	6	7	60%

Does this workforce meet the skilled and trained workforce graduation percentage requirement for the month?

- · A. Yes
- B. No
- · C. Not sure

#### SKILLED AND TRAINED WORKFORCE

	Total Number of Skilled	Number of Skilled Journeypersons	Number of Skilled Journeypersons	Graduation Percentage
Classification	Journeypersons	<b>Graduated From Apprenticeship Program</b>	With On The Job Training	Requirement
Laborer	13	6	7	60%

Does this workforce meet the skilled and trained workforce graduation percentage requirement for the month?

- · A. Yes
- B. No -6 / 13 = 46%
- · C. Not sure

### EXCEPTIONS TO THE APPRENTICESHIP GRADUATION PERCENTAGE REQUIREMENT

- If no DAS-approved apprenticeship program existed before January 1, 1995 for any apprenticeable craft:
  - Up to one-half (1/2) of the graduation percentage requirements may be satisfied by Skilled Journeypersons who commenced working in the apprenticeable craft before DAS approved an apprenticeship program for that craft in the county in which the project is located.

• A contractor or subcontractor does not need to meet the graduation percentage requirements for any apprenticeable craft in which it **performs less than 10 hours of work** during that calendar month.

### EXCEPTIONS TO THE APPRENTICESHIP GRADUATION PERCENTAGE REQUIREMENT

- A subcontractor does not need to meet the graduation percentage requirements (for all crafts it employs) if **BOTH** of the following requirements are met:
  - Subcontractor was **not** a **listed on the bid** pursuant to Pub. Contract Code §4104\* or performing work as a substitute for a subcontractor that was listed.
  - Subcontract does not exceed **one-half of 1 percent (1/2%)** of the price of the prime contract.
  - NOTE: These exceptions apply only to the graduation percentage requirements— NOT to the STW requirements generally.

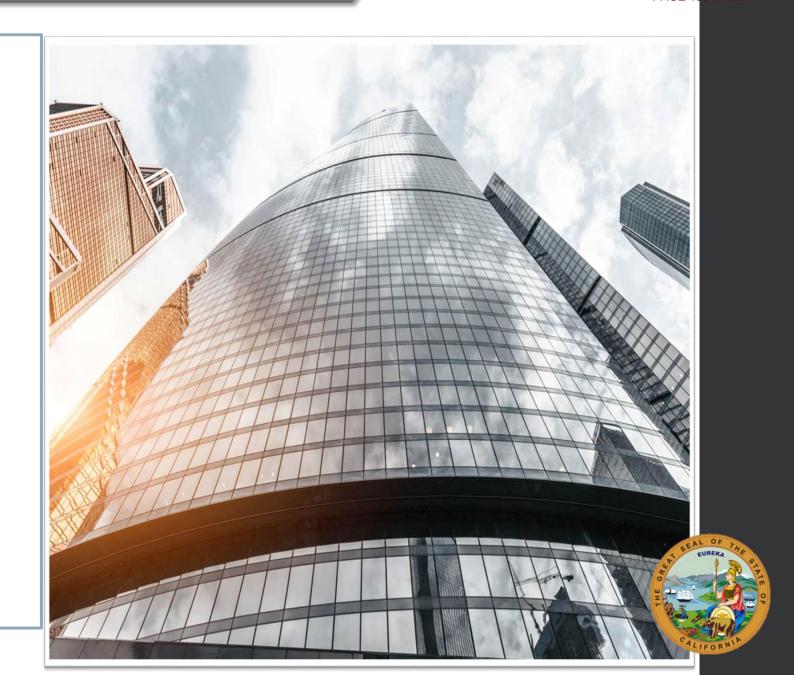


## Public Entity/Awarding Body Obligations Under Public Contract Codes§2600 & §2602.



# Skilled and Trained Workforce Requirement

Public Contract Code §2600



#### SKILLED AND TRAINED WORKFORCE REQUIREMENTS

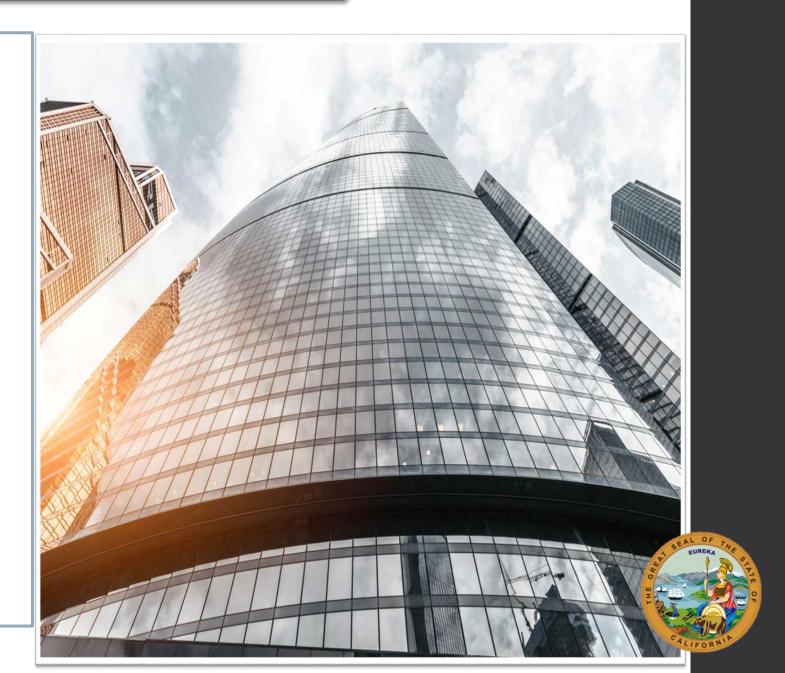
Public Contract Code §2600(a) & §2600(b)

- Chapter applies when a public entity is required by statute or regulation to obtain an enforceable commitment that a bidder, contractor, or other entity will use a skilled and trained workforce to complete a contract or project.
  - Awarding Bodies and public entities should be aware of which statutes and regulations apply to their agency. (EDC, HSC, PCC, PUC or any other government codes)
- A public entity may require a bidder or contractor to use a skilled and trained workforce to complete a contract or project regardless of whether the public entity is required to do so by a statute or regulation.



# Bidding Requirements & Enforceable Agreements

Public Contract Codes §2600, §2600.5 & §2602



#### BID REQUIREMENTS

Public Contract Code §2600(c) & §2600.5

- When a skilled and trained workforce is required by statute or regulation or by requirement of a pubic entity, the public entity **shall include in all bid documents and construction contracts** a notice that the project is subject to the skilled and trained workforce requirement.
- The failure of a public entity to provide a notice pursuant to subdivision (c) of Section 2600 shall not excuse either of the following:
  - The public entity from the **requirement to obtain an enforceable commitment** that a contractor will use a skilled and trained workforce to complete a contract or project.
  - A contractor from the obligation to use a skilled or trained workforce if such a requirement is imposed by a statute or regulation.



#### ENFORCEABLE AGREEMENTS

Public Contract Code §2602

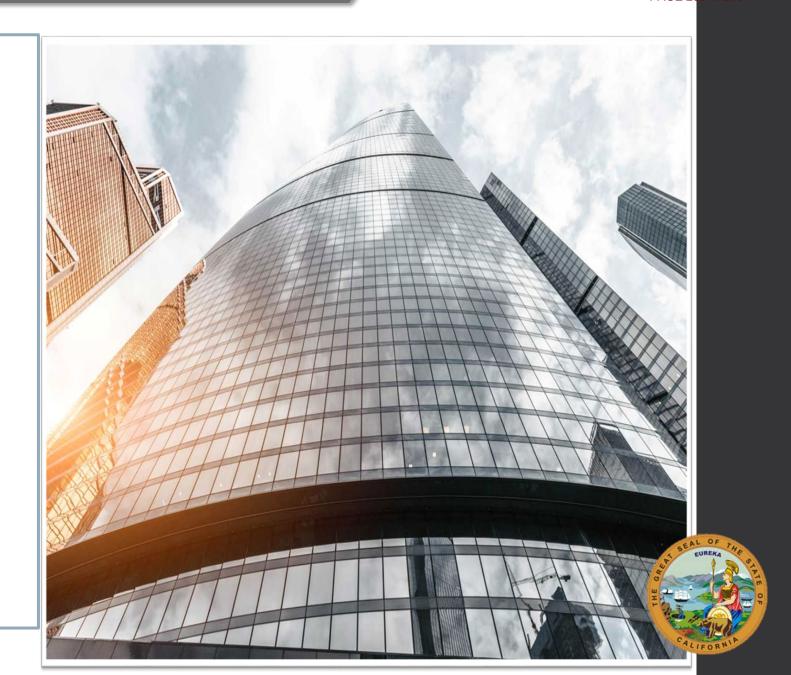
Whenever a contractor is subject to the STW requirements, the commitment shall be made in an **enforceable agreement** with the public entity or other awarding body that provides **BOTH** of the following:

- Contractor and subcontractors at **every tier will comply** with the STW requirements.
- Contractor and subcontractors will **provide a report demonstrating compliance with the STW requirements** to the public entity or awarding body on a monthly basis while the project or contract is being performed.
  - Subcontractors should supply monthly reports to prime contractor and prime contractor will supply awarding body or public entity with report for all contractors.



# Monthly Reports & Awarding Body Obligations

Public Contract Code §2602



#### FAILURE TO PROVIDE OR INCOMPLETE MONTHLY REPORT

Public Contract Code §2602(b)

- If the prime contractor fails to provide the monthly report, or provides an incomplete one, the awarding body (AB) shall withhold further payments until a complete report is provided.
- If a monthly report is **incomplete because a subcontractor** failed to timely submit the required information to the contractor:
  - AB shall withhold an amount only equal to **150 percent (150%)** of the value of the **monthly billing** for the **relevant subcontractor**.
  - The prime contractor may withhold the same amount from the subcontractor until the subcontractor provides a complete report and the AB pays the contractor the withheld payments.
- AB required to immediately resume making payments to the contractor (including all previously withheld payments) if the contractor substitutes a subcontractor for its failure to provide a complete report and replaces it with one that provides an enforceable commitment to use a STW to complete the work.



#### MONTHLY REPORT FAILING TO DEMONSTRATE COMPLIANCE

Public Contract Code §2602(c)

- If a monthly report does not demonstrate compliance with the STW requirements the AB is required to do ALL of the following:
- Withhold further payments until the contractor provides a plan to achieve "substantial compliance" with regard to the relevant trade/craft prior to contract completion.
  - Withholding amount equal to 150 percent (150%) of the value of the monthly billing for the contractor or subcontractor that failed to comply with the STW requirements.
  - Contractor may withhold the same amount from the subcontractor.
  - AB required to immediately resume making payments to the contractor (including all previously withheld payments) if the contractor substitutes a subcontractor for its failure to demonstrate compliance.
  - AB required to immediately resume making payments to the contractor (including all previously withheld payments) if a plan to achieve substantial compliance with the STW requirement is submitted
    - AB may reject the plan as insufficient and explains the reasons for the rejection within a reasonable time.



#### MONTHLY REPORT FAILING TO DEMONSTRATE COMPLIANCE

Public Contract Code §2602(c)

- If a monthly report does not demonstrate compliance with the STW requirements or the plan for substantial compliance submitted is rejected by the awarding body then AB is required to do the following:
- **Forward** a copy of the monthly report to the Labor Commissioner for issuance of a Civil Wage and Penalty Assessment.
- **Forward** a copy of the plan to achieve "substantial compliance" (if any), and its response to that plan (if any) to the Labor Commissioner.



#### SKILLED AND TRAINED WORKFORCE

A contractor provides a monthly report in which a subcontractor fails to meet the STW requirements and a plan for substantial completion which the awarding body finds is insufficient and will not allow the subcontractor to meet the STW requirements, what should the awarding body do now?

- A. Withhold amount equal to 150 percent (150%) of the value of the monthly billing for the subcontractor that failed to comply with the STW requirements.
- B. Forward a copy of the monthly report to the Labor Commissioner for issuance of a Civil Wage and Penalty Assessment.
- C. Forward a copy of the plan to achieve "substantial compliance" (if any), and its response to that plan (if any) to the Labor Commissioner.
- D. All of the above.

#### SKILLED AND TRAINED WORKFORCE

A contractor provides a monthly report in which a subcontractor fails to meet the STW requirements and a plan for substantial completion which the awarding body finds is insufficient and will not allow the subcontractor to meet the STW requirements, what should the awarding body do now?

- A. Withhold amount equal to 150 percent (150%) of the value of the monthly billing for the subcontractor that failed to comply with the STW requirements.
- B. Forward a copy of the monthly report to the Labor Commissioner for issuance of a Civil Wage and Penalty Assessment.
- · C. Forward a copy of the plan to achieve "substantial compliance" (if any), and its response to that plan (if any) to the Labor Commissioner.
- D. All of the above.

# The Labor Commissioner's Enforcement Process Under Public Contract Code §2603.



#### PENALTIES UNDER CONTRACT CODE §2603

Penalties of **up to \$5,000 per month of work performed** in violation of the STW requirements assessed against contractor or subcontractor that failed to use a STW.

• Increased penalties **up to \$10,000 per month** for a second or subsequent violation within a three-year period.

Factors considered by the Labor Commissioner in determining penalty amount:

- 1. Whether the violation was intentional;
- 2. Whether the contractor or subcontractor has committed other violations of this chapter or of the Labor Code;
- 3. Whether, upon notice of the violation, the contractor or subcontractor took steps to voluntarily remedy the violation;
- 4. The extent or severity of the violation; and
- 5. Whether a contractor or subcontractor submitted and followed a plan to achieve substantial compliance.

#### PENALTIES UNDER CONTRACT CODE §2603

- Prime contractors are not liable for penalties for violations of subcontractor unless the prime contractor had knowledge of the subcontractor's failure to comply <u>OR</u> fails to comply with <u>ANY</u> of the following requirements:
- For contracts entered into on or after January 1, 2019, the **contract** executed between the contractor and the subcontractor for the performance of work on the project **included a copy of chapter 2.9 of the Public Contract Code**;
- The **contractor periodically monitored** the subcontractor's use of a STW;
- Upon becoming aware of a failure of the subcontractor to use a STW, the **contractor took corrective action**, including, but not limited to, retaining 150% of the amount due to the subcontractor for work performed on the project until the failure is corrected; AND
- Prior to making the final payment to the subcontractor for work performed on the project, the contractor shall **obtain a declaration signed under penalty of perjury** from the subcontractor that the subcontractor has met the requirements of chapter 2.9 of the Public Contract Code.



#### LABOR COMMISSIONER'S ENFORCEMENT PROCESS

Violations of the STW requirement are enforced by the Labor Commissioner using the same process set forth in Labor Code §§ 1741 & 1742 currently used for prevailing wage and apprenticeship requirements.

Up to three years of debarment when the Labor Commissioner finds a contractor or subcontractor to have:

- · Violated the STW requirements with the intent to defraud OR
- Committed **two or more separate willful violations** of the STW requirements **within a 3-year period**.

# SKILLED AND TRAINED WORKFORCE STATUTE & FAQ LINKS

Summary of Skilled and Trained Workforce Statutes:

https://www.dir.ca.gov/Public-Works/ADA-Compliant-STW-Chart-without-New-PRC-Provision.pdf

Skilled and Trained Workforce Frequently Asked Questions:

https://www.dir.ca.gov/Public-Works/ADA-Compliant-STW-FAQ.pdf







#### Disclaimer

#### California Labor Commissioner's Office

The following presentation is intended to summarize relevant portions of existing law in the Labor Code and California Code of Regulations, but those code sections, as interpreted by the courts, will govern actual enforcement. The information contained in this presentation is a general overview of existing law or regulation. Any opinions expressed are solely those of the author/speaker and are not necessarily the official position of the Department of Industrial Relations (DIR), its Director, or any related public entity. The information in this presentation is not intended as legal advice, and does not guarantee any outcome in specific enforcement or coverage proceedings within the jurisdiction of DIR.

### Contractor Responsibilities

Prevailing Wage

Contractor Registration

Apprenticeship

>\$1,000

>\$15,000

M

>\$25,000

CADIR

Labor Code 1771, 1725.5, and 1777.5

≥\$30,000

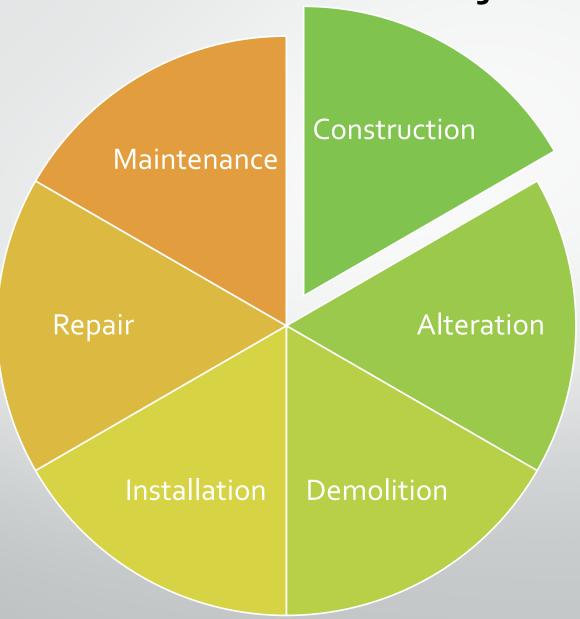


#### Who is a Public Works Contractor?



Labor Code(s) 1720(1) and 1722.1

## Public Works Project





### Construction (expanded)

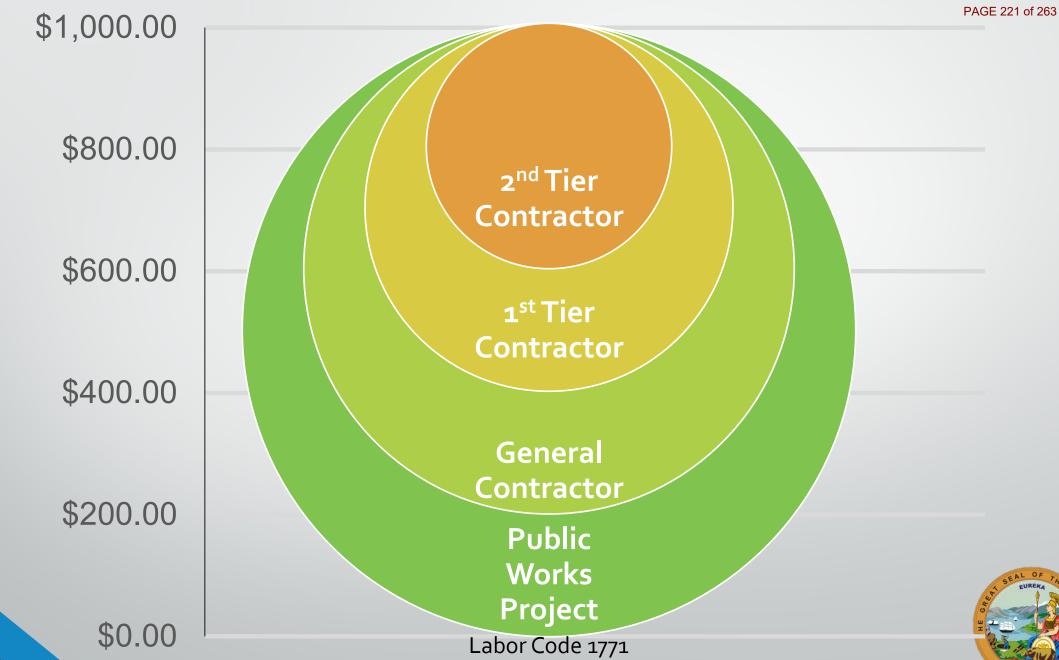
#### Preconstruction

- Design
- Site Assessment
- Feasibility Study
- Inspection
- Land Surveying

#### Postconstruction

Cleanup





>\$1,000

# Pay Prevailing Wages



Labor Codes 1771, 1774 and 1813



### Prevailing Wage

Bid Date or Contract Date

Location of Work

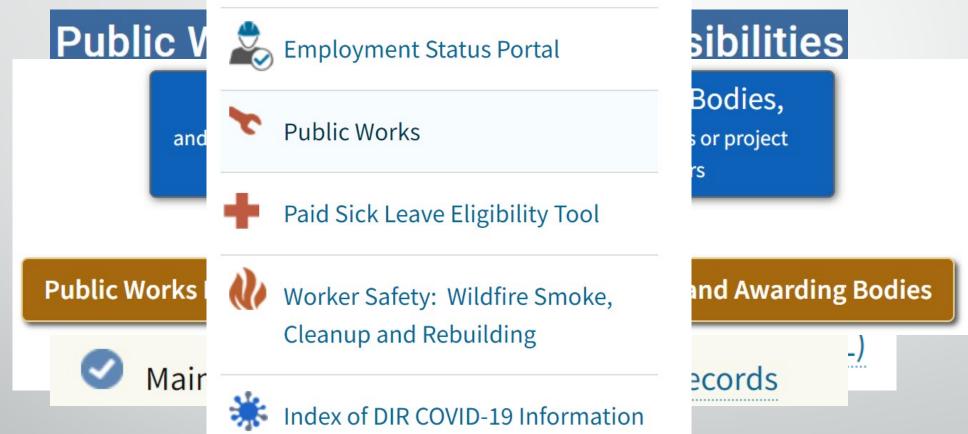
Work Classification

Applicable Wage Determination





# Prevailing Wage Determinations Navigating Website





# Prevailing Wage Determinations Navigating Website

• 2022-1 General prevailing wage determinations menu (journeyman)

First journeyman wage detexmination published in 2022

First apprentice wage determination published in 2022

Wage determinations published in prior periods

Residential wage determinations published in prior periods

- Frequently asked questions Prevailing Wage
- Frequently asked questions Off-Site Hauling
- Still have questions on prevailing wage?



# Journeyman Wage Determinations

Step one	Statewide	First examine if your craft's determination is among the basic trades that apply to most counties in California.
Step two (A)	Northern California	If you have not found your craft in step one, check this area to see if your craft's determination is one of Northern California's basic trades.
Step two (B)	Southern California	If you have not found your craft in step one, check this area to see if your craft's determination is one of Southern California's basic trades.
Step three	San Diego	After following steps one and two (B), examine this area if your project is in San Diego County.
Step four	County Determinations (subtrades)	If you have not found your craft in steps 1, 2, or 3, choose the county where work is being performed to examine the subtrades.





### Wage Determination Examined

Craft: Drywall Installer/Lather (Carpenter)#

Determination

**Issue Date:** 

August 22, 2021

#### **Effective Date:**

September 1, 2021

#### nation:

til superseded by a new determination issued by the Director of Industrial Relations. Contact the Office of the 5) 703-4774 for the new rates after 10 days from the expiration date, if no subsequent determination is issued.

#### Localities:

All localities within Imperial, Inyo, Kern, Los Angeles, Mono, Orange, Riverside, San Bernardino, San Luis Obispo, Santa Barbara and Ventura counties.

**Wages and Employer Payments:** 

trages and Employer rayments.											
	Basic	Health	Pension	Vacation	Training	Other	Hours	Total	Daily	Saturday	Sunday/
	Hourly	and		and		b		Hourly	Overtime	Overtime	Holiday
Classification	Rate	Welfare		Holiday				Rate	Hourly	Hourly	Overtime
(Journeyperson)				а					Rate	Rate	Hourly
									(1 ½ X) <sup>c</sup>	(1 ½ X) <sup>c</sup>	Rate
											(2 X)
Drywall Installer/Lather	\$44.44	\$8.00	\$5.66	\$7.16	\$0.62	\$2.77	8.0	\$68.65	\$90.87	\$90.87	\$113.09

### Issue Date Vs. Effective Date

February 2022								
Sun	Mon	Tue	Wed	Thu	Fri	Sat		
		22	23	24	25	26		
27	28							
		M	arch 202	22				
Sun	Mon	Tue	Wed	Thu	Fri	Sat		
		1	2	3	4			

August 2022								
Sun	Mon	Tue	Wed	Thu	Fri	Sat		
	22	23	24	25	26	27		
28	29	30	31					
		Sep	tember 2	2022				
Sun	Mon	Tue	Wed	Thu	Fri	Sat		
				1				

December 2022								
Sun	Mon	Tue	Wed	Thu	Fri	Sat		
				1	2	3		
4	5	6	7	8	9	10		
11								





### Wage Determination Examined

Craft: Drywall Installer/Lather (Carpenter)#

#### **Determination:**

SC-31-X-41-2021-1

#### **Issue Date:**

August 22, 2021

#### **Expiration date of determination:**

June 30, 2022\*

a new determination issued by the Director of Industrial Relations. Contact the Office of the the new rates after 10 days from the expiration date, if no subsequent determination is issued.

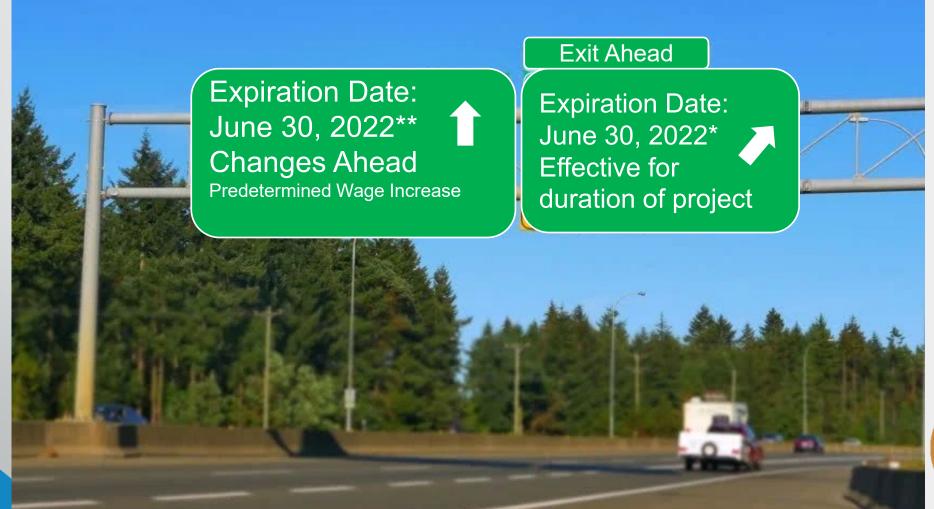
#### Localities:

All localities within Imperial, Inyo, Kern, Los Angeles, Mono, Orange, Riverside, San Bernardino, San Luis Obispo, Santa Barbara and Ventura counties.

**Wages and Employer Payments:** 

Basic	Health	Pension	Vacation	Training	Other	Hours	Total	Daily	Saturday	Sunday/
Hourly	and		and	0	b		Hourly	Overtime	Overtime	Holiday
Rate	Welfare		Holiday				Rate	Hourly	Hourly	Overtime
			а					Rate	Rate	Hourly
								(1 ½ X) °	(1 ½ X) <sup>c</sup>	Rate
								,	,	(2 X)
\$44.44	\$8.00	\$5.66	\$7.16	\$0.62	\$2.77	8.0	\$68.65	\$90.87	\$90.87	\$113.09
	Hourly Rate	Hourly and Rate Welfare	Hourly and Rate Welfare	Hourly and and Holiday	Hourly and Rate Welfare and Holiday a	Hourly and Welfare Holiday a Hourly Rate Hourly Rate (1 ½ X) c	Hourly Rate Welfare and Holiday a Hourly Rate Hourly Rate (1 ½ X) c (1 ½ X) c			

### Fixed (\*) Vs. Variable (\*\*) Wage Determinations





### Wage Determination Examined

Determination:

SC-31-X-41-2021-1

Issue Date:

August 22, 2021

**Craft: Drywall Installer/Lather (Carpenter)**#

# Indicates apprenticeable classification

#### **Expiration date of determination:**

June 30, 2022\* Effective until superseded by a new determination issued by the Director of Industrial Relations. Contact the Office of the Director - Research Unit (415) 703-4774 for the new rates after 10 days from the expiration date, if no subsequent determination is issued.

#### Localities:

All localities within Imperial, Inyo, Kern, Los Angeles, Mono, Orange, Riverside, San Bernardino, San Luis

Obispo, Santa Barbara a a counties Health Pension Vacation vvages and ⊑піріоуєї г аупісії Other Training Total Saturday Sunday/ Daily and and Hourly Overtime Overtime Holiday Classification Welfare Holiday Overtime Rate Hourly Hourly Hourly (Journeyperson) Rate Rate (1 ½ X) ° (1 ½ X) <sup>c</sup> Rate (2 X)Drywall Installer/Lather \$8.00 \$0.62 \$2.77 \$90.87 \$113.09 \$44.44 \$5.66 \$7.16 8.0 \$68.65 \$90.87

## Scope, Holiday, Travel, Increases

#### COUNTY

Holidays,
scope of work,
travel & Predetermined
subsistence increase

Select One 
Select One
Holidays

Holidays

Holidays

Scope

Travel

County Predetermined increase

Alameda Increase

Alpine Increase

**REGION** 

CRAFT	CLASSIFICATION	
TRRICKI AVER	BRICKLAYER, BLOCKLAYER, STONEMASON	

HOLIDAY PROVISIONS	SCOPE OF WORK PROVISIONS	TRAVEL & SUBSISTENCE PROVISIONS
<u>Holidays</u>	Scope of Work	Travel & Subsistence

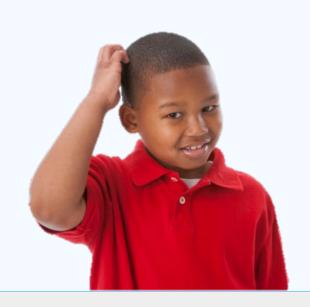
#### Office of the Director – Research Unit

Our staff is working remotely and is available to take public inquiries – please see the Contact Us page for information on how to reach us.

For Prevailing Wage questions, please send your inquiry.

Statistics@dir.ca.gov rovide the following information with your inquiry.

- Your name
- Company or agency name
- Email address
- A summary of your question(s)
- Bid Advertisement Date
- Craft(s)/Classification(s)
- County Location of the Project



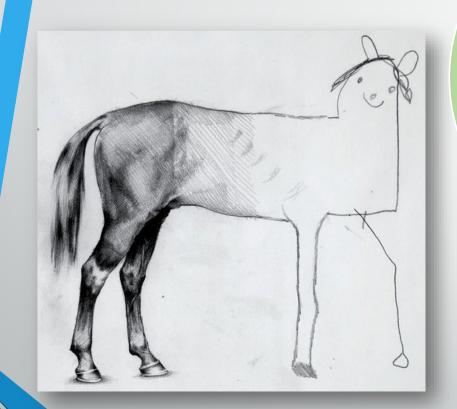
### Work Classification Overlap

Craft 1 Craft 2

Required to Or Required to use Craft 1 2 use Craft 2



#### Maintain and Furnish Payroll Records



Certified
Payroll
Records
(10 Days After
Request)

Online Form
Electronic
Certified
Payroll
(Monthly)

XML File Electronic Certified Payroll (Monthly)



### Contractor Responsibilities

Prevailing Wage

Contractor Registration

Apprenticeship

>\$1,000

>\$15,000

M

>\$25,000

**CADIR** 

Labor Code 1771, 1725.5, and 1777.5

≥\$30,000

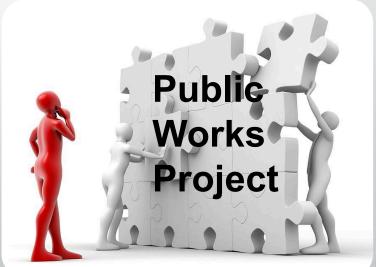


### Register as a Public Works Contractor



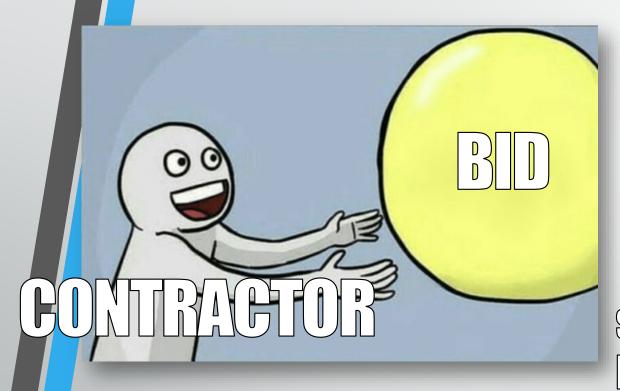
BID	
	AMT
General Contractor	\$\$\$
Subcontractor 1	\$\$
Subcontractor 2	\$\$
Total	\$\$\$\$







### Register as a Public Works Contractor

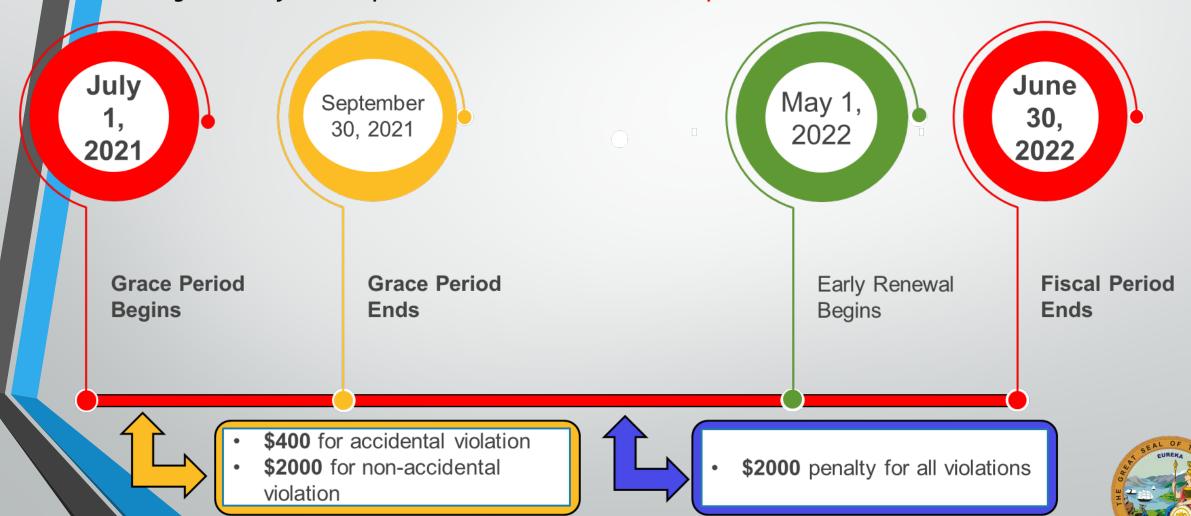


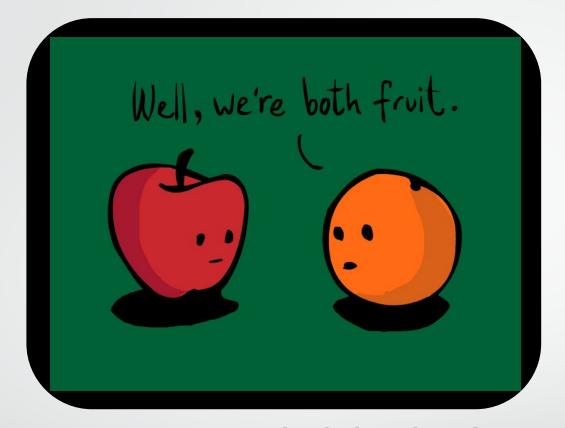




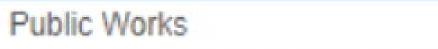
## Fiscal Periods for Registrations

- Users can register for one, two, or three fiscal periods
- Failure to register timely when required is a violation and will result in penalties





- An active registration represents a *single legal entity*
- Any changes to a legal entity's type will require a <u>new registrαtion</u>
  - le. a sole proprietorship changes to a corporation







### Contractor Responsibilities

Prevailing Wage

Contractor Registration

Apprenticeship

>1,000

>15,000

M

>25,000

**CADIR** 

Labor Code 1771, 1725.5, and 1777.5

≥30,000





Employ apprentices in at least the minimum ratio



Pay required training fund rate to the applicable committee(s) or CAC.



Notify apprenticeship committees of contract award information



\$30,000.00

\$25,000.00

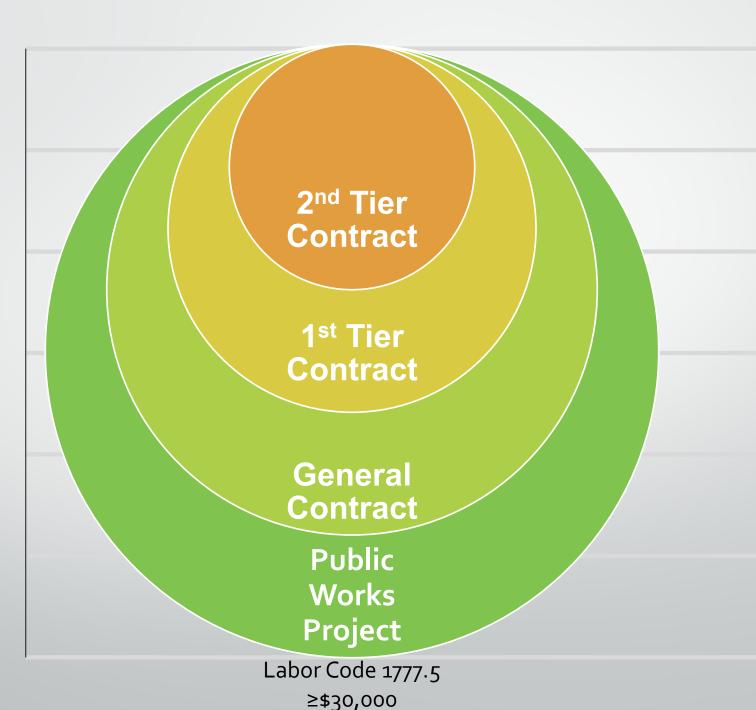
\$20,000.00

\$15,000.00

\$10,000.00

\$5,000.00

\$0.00



### Wage Determination Examined

**Craft: Drywall Installer/Lather (Carpenter)**#

# Indicates apprenticeable classification

#### **Determination:**

SC-31-X-41-2021-1

#### Issue Date:

August 22, 2021

#### Expiration date of determination:

June 30, 2022\* Effective until superseded by a new determination issued by the Director of Industrial Relations. Contact the Office of the Director - Research Unit (415) 703-4774 for the new rates after 10 days from the expiration date, if no subsequent determination is issued.

#### Localities:

All localities within Imperial, Inyo, Kern, Los Angeles, Mono, Orange, Riverside, San Bernardino, San Luis Obispo, Santa Barbara and Ventura counties.

**Wages and Employer Payments:** 

wages and Employer rayments.											
	Basic	Health	Pension	Vacatio	Training	ther	Hours	Total	Daily	Saturday	Sunday/
	Hourly	and		and •		b		Hourly	Overtime	Overtime	Holiday
Classification	Rate	Welfare		Holiday				Rate	Hourly	Hourly	Overtime
(Journeyperson)				а					Rate	Rate	Hourly
									(1 ½ X) <sup>c</sup>	(1 ½ X) <sup>c</sup>	Rate
											(2 X)
Drywall Installer/Lather	\$44.44	\$8.00	\$5.66	\$7.16	\$0.62	\$2.77	8.0	\$68.65	\$90.87	\$90.87	\$113.09

# Apprenticeship Status and Safety Training Certification

Apprenticeship status certification for public works

Enter search string (LLLLF9999) here

SmitM1234



How to compile the search string:

The search string is a total of nine letters and numbers (no characters ', - , etc): the first four letters of the last name (use spaces to make four letters if the last name is shorter than four letters), the first letter of the first name and the last four digits of the social security number (LLLLF9999). Letters can be entered as lower or upper case.

#### Examples:

Uncle Sam ssn 123-45-6789 would be entered as Sam U6789

Goddess Minerva ssn 123-45-5555 would be entered as MineG5555

Richard Al-Ham ssn 111-44-1111 would be entered as AlhaR1111

Robert O'Brian ssn 111-22-3333 would be entered as OBriR3333

James McHenry ssn 555-66-1234 might be entered as McHeJ1234 or Mc HJ1234

https://www.dir.ca.gov/das/appcertpw/AppCertSearch.asp

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#### DEPARTMENT OF INDUSTRIAL RELATIONS **DIVISION OF APPRENTICESHIP STANDARDS**

P.O. Box 420603

San Francisco, CA 94142-0603



#### To whom it may concern:

The Division of Apprenticeship Standards hereby certifies that, according to transactions recorded as of August 25, 2019, the below named individual is registered with the State of California as an apprentice in the occupation during the period between the start date and the end date or completion (comp) date listed below. If there is no end date for an occupation, the Apprentice is currently registered in that occupation. Occupations marked with an asterisk (\*) are certified as apprenticeable occupations for Public Works projects. For individuals who have completed an approved 20 hour safety training, the course and the date completed are

listed below. Name

Mason Smith

**Mason Smith** 

**Occupation** 

\* Cement Mason

\* Cement Mason

ction Effective Date

Start 03-02-2016

Comp 12-25-2017

Cert. id

SmitM1234

SmitM1234

If you have any questions please contact your local Division of Apprenticeship Standards office.



Glen Forman Deputy Chief



#### CAC - Public works Training Fund Search

**Training Fund Search** 

This search function allows awarding agencies, labor and contract compliance organizations, contractors, and other interested parties to view and print a specific contractor's Training Fund contribution paid to the California Apprenticeship Council for the previous 48 months. The payment of the training funds is regulated by California Labor Code 1777.5(m)(1)

Please enter the contractor's license number to begin search.

If you do not know the contractor's license number you may search for it at this site: www.cslb.ca.gov

For employers without a Contractor's license you may look up the id number that was assigned

987654

Submit

Don't see your recent training i

contribution in the payment history?

Possible reasons:

1) Wrong Remit address, our current remit address is as follows:

Department of Industrial Relations

California Apprenticeship Council

P. O. Box 511283

Los Angeles, CA 90051-7838

dir.ca.gov/CAC/trainingfund/Tfsearch.html



STATE OF CALIFORNIA Gavin Newsom, Governor

#### CALIFORNIA APPRENTICESHIP COUNCIL

P.O. Box 420603 San Francisco, CA 94142-0603 (415) 703-4920



Re: Training Fund Contribution Inquiry for:

ACME, Inc. Lic.# 987654

9876 Ocean Blvd

Long Beach, CA 90802

To whom it may concern:

The California Apprenticeship Council hereby certifies that, according to transactions recorded as of August 25, 2019, the training fund contributions shown below have been received from the contractor above during the last four years. The contributions are sorted by County, Check date, Project and Occupation.

County	Occupation	Check date	Amount in \$
Project	•		
Los Angeles SP-98765	Cement Masons	04/05/2017	97.92
Los Angeles SP-98765	Laborers	04/05/2017	142.14

If you have any questions please contact the Division of Apprenticeship Standards. <a href="mailto:trainingfund@dir.ca.gov">trainingfund@dir.ca.gov</a>



for the Secretary, California Apprenticeship Council



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# Minimum Apprenticeship Ratio

Straighttime
Journeyman
Hours
Worked

20%

Apprentice
Hours
Required



# #Journeyman Hours Worked

Daily Straight Time ≤8hrs Weekly Straight Time ≤4ohrs

Daily Overtime >8hrs Weekly Overtime >40hrs

Included in Ratio Calculation

Not Included in Ratio Calculation



# Saturdays, Sundays, Holidays

Daily Straight Time ≤8hrs Weekly Straight Time ≤4ohrs

Daily Overtime >8hrs Weekly Overtime >40hrs

Included in Ratio Calculation

Not Included in Ratio
Calculation



# Apprentice Hours Worked

Daily Straight Time ≤8hrs Weekly Straight Time ≤40hrs

Daily Overtime >8hrs Weekly Overtime >40hrs

Included in Ratio Calculation



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#### **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: <a href="http://www.dir.ca.gov/databases/das/pwaddrstart.asp">http://www.dir.ca.gov/databases/das/pwaddrstart.asp</a> 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. <a href="mailto:Except for projects with less than 40 hours of journeyworkers work, you must request and employ apprentices in no less than 8 hour increments.">https://www.dir.ca.gov/databases/das/pwaddrstart.asp</a> 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. <a href="mailto:Except for projects with less than 40 hours of journeyworkers work, you must request and employ apprentices in no less than 8 hour increments.">https://www.dir.ca.gov/databases/das/pwaddrstart.asp</a> 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.

List one occupation/craft per form

List one occupation	nycraft per form
Date:	Contractor Requesting Dispatch:
To Applicable Apprenticeship Committee:	Name:
Name:	Address:
Address:	
	License No.
Tel. NoFax No	PWC Registration Number:
	Tel. NoFax No

Project Information: PWC Project Number	Contract	Number
Total Contract Amount.	Sub-Contract /	Amount
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)	Timeto Report:
Name of Person to Report to:		<del>-</del>
Address to Report to:		<del>_</del>
-		



### At Least 72 Hours Notice Required





#### PUBLIC WORKS CONTRACT AWARD INFORMATION

Contract award information must be sent to your Apprenticeship Committee it 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/databases/das/pwaddrstart.asp 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
AILING ADDRESS- NUMBER & STREET, CITY, ZIP CODE	AREA CODE & TELEPHONE NO.
ME & ADDRESS OF PUBLIC WORKS PROJECT	DATE YOUR CONTRACT EXECUTED
	DATE OF EXPECTED OR ACTUAL START OF PROJECT
AME & ADDRESS OF PUBLIC AGENCY AWARDING CONTRACT	ESTIMATED NUMBER OF JOURNEYMEN HOURS
	OCCUPATION OF APPRENTICE
HIS FORM IS BEING SENT TO: (NAME & ADDRESS OF APPRENTICESHIP PROGRAM(S))	ESTIMATED NUMBER OF APPRENTICE HOURS
	APPROXIMATE DATES TO BE EMPLOYED

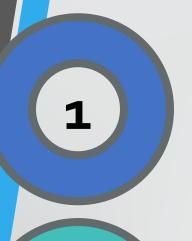
#### This is not a request for dispatch of apprentices.

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 We are already approved to train apprentices by the Enter name of the Committee Apprenticeship Committee. We will employ and train under their Standards. We will comply with the standards of Enter name of the Committee Apprenticeship Committee for the duration of this job only. 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

		Minimum Ratio	Contract Award Information	Maximum Ratio	Journeyman On Duty	PAGE 258 of 263
	Box 1	One apprentice hour for every five journeyman hours	May be sent only to applicable apprenticeship committee(s) that approved the contractor	May be found in the apprenticeship standards under which the contractor has agreed to be bound by. Calculated at the end of the project and not on a daily basis.	Not applicable but will enforce DAS approved apprenticeship standards	
	Box 2		Must be sent to all applicable		Not applicable but will enforce DAS approved apprenticeship standards	
	Box 3		apprenticeship committees	Not applicable	Apprentices must work with or under a journeyman at all times.	SEAL OF THE EUREKA



Monitor contractor's payroll records to ensure apprentices are reported in the correct ratio.

2

Verify training funds were paid for all Applicable crafts.

3

Request proof that contract award information was submitted for all contracted work.



### Contractor Responsibilities

Prevailing Wage

Contractor Registration

Apprenticeship

>\$1,000

>\$15,000

M

>\$25,000

**CADIR** 

Labor Code(s) 1771, 1725.5, and 1777.5

≥\$30,000



### Contractor Responsibilities

Prevailing Wage

Contractor Registration

Apprenticeship

≤\$200 Per Calendar Day of Noncompliance Per Worker Subcontracting With Unregistered Contractor \$100/day 10,000/project

Engaged in Performance of Public Work Contract \$100/day \$8,000/project

≤\$300 Per Calendar Day of Noncompliance

Labor Code(s) 1775(a) (1), 1771.1 (g) and (h) (1), and 1777.7





#### Questions?

- Feel free to email us at <u>publicworks@dir.ca.gov</u>
  - Please include in the subject line—the topic of your inquiry (registration #, eCPR's, etc.)
  - In the body, describe the issue or question you have
  - Attach any screenshots of any issues you experience with our systems
  - Provide your contact information so we can get back to you



