

DEPARTMENT OF INDUSTRIAL RELATIONS

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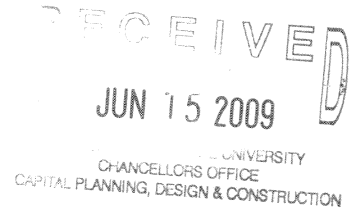
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June 10, 2009

James Sowerbrower  
The California State University Chancellor's Office  
401 Golden Shore  
Long Beach, CA 90802-4210



RE: Approval of Program Update  
LCP ID. : 2003.00356

Dear Mr. Sowerbrower:

The California State University Chancellor's Office Labor Compliance Program has satisfied the updating requirements of Title 8, California Code of Regulations, Section 16425(f) and accordingly the status of this program has been converted from "extended initial approval" to "approved" without an expiration date.

Your program must continue to comply with the requirements of Title 8, CCR, Sections 16421 through 16439, as well as with all other statutes and regulations requirements pertaining to the enforcement of the state's prevailing wage requirements. In particular, you are reminded of your continuing obligation to submit timely annual reports pursuant to Section 16431 of the regulations, using the appropriate form prescribed by that regulation.

If you have any questions or concerns, please contact Tess Gormley at 415/703-5063.

Sincerely yours,

A handwritten signature in black ink that reads "Tess Gormley".

Tess Gormley  
Special Assistant for  
John C. Duncan, Director of Industrial Relations

cc: Susan Nakagama, Regional Manager



# **THE CALIFORNIA STATE UNIVERSITY OFFICE OF THE CHANCELLOR**



## **LABOR COMPLIANCE PROGRAM**

Prepared by:  
The California State University  
Office of the Chancellor  
Capital Planning, Design and Construction  
401 Golden Shore  
Long Beach, CA 90802-4210

Revised February 27, 2009



**THE CALIFORNIA STATE UNIVERSITY, OFFICE OF THE CHANCELLOR**  
**LABOR COMPLIANCE PROGRAM**

**Table of Contents**

<u>Section</u>	<u>Page No.</u>
<b>1.00 Labor Compliance Program .....</b>	<b>4</b>
1.00 Labor Compliance Program - Introduction.....	5
1.01 Public Works Subject to Prevailing Wage Laws .....	6
1.02 Competitive Bidding on Public Works Projects .....	6
1.03 Compliance with Conflict of Interest Requirements .....	6
1.04 Job Start Meeting .....	7
1.05 Review of Certified Payroll Records .....	9
1.06 Reporting of Willful Violations to Labor Commissioner .....	14
1.07 Enforcement Action .....	15
1.08 Notification of Withhold to Contractor and Appeal Rights of Program Enforcement Action.....	22
1.09 Priority Distribution of Forfeited Sums .....	24
1.10 Outreach Activities .....	25
1.11 Annual Reports .....	26
1.12 Definitions.....	27
 <b>2.00 Attachments/Forms.....</b>	 <b>30</b>
Attachments	
A. Labor Compliance Checklist	
B. Single Project Labor Compliance Review and Enforcement Report Form	
C. Request for Approval of Forfeiture	
D. Notice of Withholding of Contract Payments and Notice of Right to Obtain Review—Formal Hearing	
E. Request for Review	
F. Notice of Temporary Withholding of Contract Payments	
G. Notice of Transmittal	
H. Notice of Opportunity to Review Evidence	
I. Request to Review Evidence	
J. Prevailing Wage Hearing Regulations	
Forms	
Payroll Reporting Form	
Statement of Compliance	
Authorization to Certify	
Non-Performance Report	
Fringe Benefit Statement	

Authorization for Payroll Deduction  
Apprentices on Public Work Projects/Summary of Requirements  
(DAS PW)  
Public Works Contract Award Information (DAS 140)  
Request for Dispatch of Apprentice  
Training Fund Contributions, California Apprenticeship Council (CAC2)  
Sample Letter: 1st Demand for Certified Payroll  
Certified Payroll and Payroll Records Request Form  
Annual Report Reporting Form

**THE CALIFORNIA STATE UNIVERSITY  
OFFICE OF THE CHANCELLOR**

**LABOR COMPLIANCE PROGRAM**

**1.00 – LABOR COMPLIANCE PROGRAM**

## 1.00 - LABOR COMPLIANCE PROGRAM -- INTRODUCTION

The primary function of the Labor Compliance Program is to ensure that public works contractors comply with the prevailing wage requirements found in the Public Works Chapter of the Labor Code per Title 8 California Code of Regulations section 16432 (a). The California State University, Office of the Chancellor (hereinafter referred to as Chancellor's Office) has instituted this Labor Compliance Program for implementing its policy relative to the labor compliance provisions of state-funded public works contracts. This program is applicable to all public works projects undertaken by the Chancellor's Office pursuant to funding from or through the Kindergarten-University Public Education Facilities Bond Act of 2002 or the Kindergarten-University Public Education Facilities Bond Act of 2004. This Labor Compliance Program contains the labor compliance standards required by state and federal laws, regulations, and directives, as well as Chancellor's Office policies and contract provisions. This Labor Compliance Program was initially approved by the Department of Industrial Relations on November 6, 2003.

The California Labor Code section 1770 *et seq.*, and Education Code section 17424 require that contractors on public works projects pay their workers based on the prevailing wage rates which are established and issued by the Department of Industrial Relations, Division of Labor Statistics and Research.

In establishing this Labor Compliance Program, the Chancellor's Office adheres to the statutory requirements as enunciated in Labor Code section 1771.5 (b). Further, it is the intent of the Chancellor's Office to actively enforce this Labor Compliance Program by monitoring its construction sites for the payment of prevailing wage rates, and by requiring contractors and subcontractors having workers on its sites to submit required labor compliance documentation demonstrating their full compliance.

Should applicable sections of the Labor Code or Title 8 of the California Code of Regulations undergo alteration, amendment, or deletion, the affected portions of this program are modified accordingly.

**Questions regarding the Chancellor's Office Labor Compliance Program, issues related to this program, or the California Labor Code should be directed to Mr. James Sowerbrower or Ms. Barbara Nicholson at:**

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### **1.01 Public Works Subject to Prevailing Wage Laws**

The Chancellor's Office has applied state prevailing wage rates as set forth in Labor Code sections 1720, 1720.2, 1720.3, and 1771 to the Chancellor's Office public works construction contracts. Public works contracts include, but are not limited to, such types of work as erection, construction, alteration, painting, repair, or improvement of state structure, building road or other state improvement of any kind. For these projects, the Division of Labor Statistics and Research (DLSR) issues predetermined, appropriate prevailing wage rates for particular construction trades and crafts by county.

#### **A. Types of Contracts to which Prevailing Wage Requirements Apply**

As provided in Labor Code section 1771.7(a), an awarding body Labor Compliance Program (LCP) shall only apply to public works contracts, commencing on or after April 1, 2003, that are subject to funding from or through the Kindergarten-University Public Education Facilities Bond Act of 2002 or the Kindergarten-University Public Education Facilities Bond Act of 2004.

#### **B. Applicable Dates for Enforcement of the LCP**

The applicable dates for enforcement of awarding body Labor Compliance Programs is established by Title 8 of the California Code of Regulations section 16422. The Chancellor's Office submitted a Labor Compliance Program to the Department of Industrial Regulations which was approved on November 6, 2003. From this date forward, the contracts described in section 1.01-A above shall be subject to Labor Code section 1771.5 (b). If there is no Call for Bids for a contract, the applicable date for that contract shall be the date of the award of the contract.

### **1.02 Competitive Bidding on Public Works Contracts**

The Chancellor's Office publicly advertises or solicits public works projects for which it awards contracts pursuant to a competitive bidding process.

Further information regarding the requirements of the Chancellor's Office bidding process may be obtained by accessing Section XII, of the State University Administrative Manual (SUAM) found on the internet at <http://www.calstate.edu/cpdc/Suam/SUAM9700-9843.pdf> . All Chancellor's Office bid advertisements (or bid solicitations) and public works contracts shall contain appropriate language concerning the requirements of the Public Works chapter of the Labor Code.

### **1.03 Compliance with Conflict of Interest Requirements**

The Chancellor's Office will comply with Title 8 California Code of Regulations section 16430, which requires that an Awarding Body whose employees operate its own Labor Compliance Program or the Awarding Body that operates a Labor Compliance Program under contract to a third-party LCP must determine and designate the employees and/or consultants who participate in making governmental decisions. The designated employees and/or consultants shall file Statement of Economic Interest (Fair Political Practices Commission ("FPPC") Form 700) with the filing officer of the Chancellor's Office and comply with other applicable requirements of the Political Reform Act (Government Code section 87100, *et seq.*).

Government Code section 82019, in pertinent part, defines a designated employee as “any officer, employee, member, or consultant of any agency whose position with the agency: [i]s designated in a Conflict of Interest Code because the position entails the making or participation in the making of decisions which may foreseeably have a material effect on any financial interest” (Government Code section 82019(a)(3)). An employee or a consultant is considered a public official and therefore subject to the Political Reform Act when either makes substantive recommendations that are, and over an extended period of time have been, regularly approved without significant amendment or modifications by another public official or government agency (Title 2 California Code of Regulations section 18701(a)(1)(A)(iii)).

The determination is made according to the factors set forth in Title 2 California Code of Regulations section 18701 *et seq.*:

- A. Determine whether the employee or consultant is making, participating in making, or using his or her official position to influence the making of a governmental decision (Title 2 California Code of Regulations section 18701(a)).
- B. If the answer to subsection 1.03-A above is “yes”, ascertain the economic interest and determine whether the economic interest is directly or indirectly involved in the governmental decision (Title 2 California Code of Regulations sections 18702 – 18702.3).
- C. If an economic interest is involved, the materiality of the effect of the decision on the economic interest must be ascertained (Title 2 California Code of Regulations section 18705.) Further, the effect of the governmental decision on the employee or the consultant’s economic interests must be distinguished from the governmental decisions effect on the general public.
- D. If a determination is made that all of these are affirmative, then there is a conflict of interest.
- E. However, the following exceptions exist in the making or participating in making a governmental decision:
  1. Those governmental decisions or actions by an employee or consultant that are solely ministerial, secretarial, manual, or clerical.
  2. Actions where the employee or the consultant appears before a government agency on a matter related to his or her own personal interests or that of their immediate family;
  3. Communicates with the general public or the press; and
  4. Negotiates his or her own compensation (Title 6 California Code of Regulations section 18702.4).

#### **1.04 Job Start Meeting**

After the Chancellor’s Office awards the construction contract, and prior to the commencement of the work, a mandatory preconstruction meeting (Job Start Meeting) shall be conducted with the contractor and those subcontractors listed in its bid documents. The Construction

Administrator and a Labor Compliance Program Representative (LCPR) will co-chair the job start meeting, or an LCPR shall chair a separate labor compliance job start meeting.

At that meeting, the LCPR will discuss the federal and state labor law requirements applicable to the contract, including prevailing wage requirements, record keeping responsibilities, the submittal of required labor compliance documentation to the Chancellor's Office, and the prohibition against discrimination in employment. The Construction Administrator will address specific issues to the administration of the construction contract such as ingress and egress to the site, testing, change orders, etc.

- A. The LCPR will provide the contractor and each subcontractor with a Labor Compliance Checklist, form CSU.LC-00, (presented as Attachment A) and will discuss in detail the following checklist items:
1. The contractor's duty to pay prevailing wages (Labor Code section 1770 *et seq.*);
  2. The contractor's duty to employ registered apprentices on public works projects (Labor Code section 1777.5);
  3. The penalties for failure to pay prevailing wages and to employ apprentices, including forfeitures and debarment (Labor Code sections 1775, 1777.7, and 1813);
  4. The requirement to maintain and submit copies of certified payroll records on a weekly basis to the Chancellor's Office at times designated in the contract or within 10 days of request by the Chancellor's Office or a Labor Compliance Program Representative, and penalties for failure to do so under Labor Code section 1776. The requirement includes and applies to all subcontractors performing work on Chancellor's Office projects even if their portion of the work is less than one half of one percent of the total amount of the contract;
  5. The prohibition against employment discrimination (Labor Code sections 1735 and 1777.6; Government Code; and Title VII of the Civil Rights Act of 1964, as amended);
  6. The prohibition against taking or receiving a portion of an employee's wages (Labor Code section 1778) (kickback);
  7. The prohibition against accepting fees for registering any person for public works (Labor Code section 1779) or for filing work orders on public works (Labor Code section 1780);
  8. The requirement to list all subcontractors that are performing one-half of one percent of the total amount of the contract (Public Contract Code section 4100 *et seq.*);
  9. The requirement to be properly licensed and to require all subcontractors to be properly licensed, and the penalty for employing workers while unlicensed (Labor

Code section 1021 and under California Contractors License Law. Also, see Business and Professions Code section 7000 *et seq.*);

10. The prohibition against unfair competition (Business and Professions Code sections 17200-17208);
11. The requirement that the contractor and subcontractor be properly insured for Workers' Compensation (Labor Code section 1861);
12. The requirement that the contractor abide by the Occupational Safety and Health laws and regulations that apply to the particular public works project;
13. The federal prohibition against hiring undocumented workers, and the requirement to secure proof of eligibility/citizenship from all workers; and
14. The requirement to provide itemized wage statements to employees (Labor Code section 226).

The contractors and subcontractors present at the Job Start meeting will be given the opportunity to ask questions of the LCPR. The checklist will then be signed by the contractor's representative, the LCPR and a representative of each subcontractor who is present.

B. At the Job Start meeting, or at a separate Labor Compliance job start meeting, the LCPR will provide the contractor with a copy of the Chancellor's Office Labor Compliance Program and the following documents, found in Section 2.00:

- CSU.LC-01, Payroll Reporting Form and Certification
- CSU.LC-02, Statement of Compliance
- CSU.LC-03, Authorization to Certify
- CSU.LC-04, Non-Performance Report
- CSU.LC-05, Fringe Benefit Statement
- CSU.LC-06, Authorization for Payroll Deduction
- DAS 140, Summary of Requirements

It will be the contractor's responsibility to provide copies of the LCP documents to all subcontractors and to any substituted subcontractors.

## **1.05 Review of Certified Payroll Records**

A. Certified Payroll Records Required

The contractor and each subcontractor shall maintain payrolls and basic records (timecards, canceled paychecks (copy of front and back), cash receipts, trust fund forms, accounting ledgers, tax forms, superintendent and foreman daily logs, etc.) during the course of the work and shall preserve them for a period of three (3) years thereafter for all trades workers working at the Chancellor's Office project sites. Such records shall include the name,

address, and social security number of each worker, his or her classification, the rate of pay (including rates of contributions for, or costs assumed to provide fringe benefits), daily and weekly number of hours worked, deductions made, and actual wages paid. The LCPR may require submittal of any or all of these records at any time and shall be provided within 10 days following receipt of the request.

1. Submittal of Certified Payroll Records

The contractor and each subcontractor shall maintain and submit weekly certified payroll records, as required and directed. The contractor shall be responsible for the submittal of payroll records of all its subcontractors. All certified payroll records shall be accompanied by a statement of compliance signed by the contractor indicating that the payroll records are correct and complete, that the wage rates contained therein are not less than those determined by the Director of the Department of Industrial Relations, and that the classifications set forth for each employee conform with the work performed.

2. Use of Electronic Reporting Forms

a. Certified payroll records required by Labor Code section 1776 may be maintained and submitted electronically, subject to the following conditions:

- (1) Reports must contain all of the information required by Labor Code section 1776;
- (2) Information must be organized in a manner that is similar or identical to the Department of Industrial Relations "Public Works Payroll Reporting Form" (Form A-1-131);
- (3) Reports shall be in a format and use software that is readily accessible and available to contractors, subcontractors and the Chancellor's Office, LCP and the Department of Industrial Relations;
- (4) Reports must be in the form of a non-modifiable image or record; and
- (5) Reports must bear an electronic signature or include a copy of an original certification made on paper or printed out and submitted on paper with an original signature.

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

3. Full Accountability

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

Sole owners and partners who work on a contract must also submit a certified payroll record listing the days and hours worked, and the trade classification descriptive of the work actually done. The contractor shall make the records required under this section available for inspection by an authorized representative of the Chancellor's

Office and the Department of Industrial Relations, and shall permit such representatives to interview tradesworkers during working hours on the project site.

4. Responsibility for Subcontractors

The contractor shall be responsible for ensuring adherence to labor compliance standards and provisions by its subcontractors in the manner specified by Labor Code Section 1775. Moreover, the contractor is responsible for Labor Code violations by its subcontractors pursuant to Labor Code section 1775 (b).

The contractor shall monitor the payment of the specified general prevailing per diem wages by each subcontractor to its employees by periodic review of the subcontractor's certified payroll records.

5. Payment to Employees

Employees must be paid unconditionally, and not less often than once each week, the full amounts that are due and payable for the period covered by the particular payday. Therefore, an employer must establish a fixed workweek (i.e., Sunday through Saturday) and an established payday (such as Friday or the preceding day should such payday fall on a holiday). On each and every payday, each worker must be paid all sums due as of the end of the preceding workweek and must be provided with an itemized wage statement.

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

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

B. Apprentices

Apprentices shall be permitted to work as such only when they are registered, individually, under a bona fide apprenticeship program registered and approved by the Department of Industrial Relations Division of Apprenticeship Standards. Any worker listed on a payroll at an apprentice wage rate who is not registered shall be paid the journey level wage rate determined by the Department of Industrial Relations for the classification of the work

he/she actually performed. An apprentice who is registered and has worked outside of the prescribed geographic area is not qualified to receive the apprentice rate and must be paid the journey level rate.

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

Pre-apprentice trainees, trainees in nonapprenticeable crafts, and others who are not duly registered will not be permitted on public works projects unless they are paid full prevailing wage rates as journeypersons.

Compliance with California Labor Code section 1777.5 requires all public works contractors and subcontractors to:

1. Apply for a Certificate of Approval for the employment and training of apprentices for each craft or trade;
2. Request dispatch of apprentices and employ apprentices as available on public works projects in a ratio to journey persons as stipulated in the Apprenticeship Standards under which each Joint Apprenticeship Committee operates, but in no case shall the ratio be less than one (1) apprentice to each five (5) journey person hours, unless a Certificate of Exemption is obtained and provided to the LCPR;
3. Contribute to the training fund in the amount identified in the prevailing wage rate publication for journeypersons and apprentices. Where the trust fund administrators cannot accept the contributions, then payment shall be made to the California Apprenticeship Council, P.O. Box 420603, San Francisco, CA, 94142; and,
4. It should be noted that a prior approval for a separate project does not confirm approval to train on any project. The contractor/subcontractor must check with the applicable Joint Apprenticeship Committee to verify status. The contractor should submit award information (DAS 140) to the Apprenticeship Committee for each apprenticeable craft or trade prior to commencing work on contracts for public works projects.

#### C. Audits

The Chancellor's Office shall prepare an audit whenever the LCPR has determined that there has been a violation of the Public Works Chapter of the Labor Code resulting in the underpayment of wages. The audit shall be a written summary reflecting prevailing wage deficiencies for each underpaid worker, and include any penalties assessed under Labor Code sections 1775 and 1813, after consideration of the best information available as to actual hours worked, amounts paid, and classifications of workersemployed in connection with the public work. Such available information may include, but is not limited to, worker interviews, complaints from workers or other interested persons, all time cards,

canceled checks, cash receipts, trust fund forms, books, documents, schedules, forms, reports receipts or other evidence which reflect job assignments, work schedules by days and hours, and the disbursement by way of cash, check or in whatever form or manner of funds to a person(s) by job classification and/or skill pursuant to a public works project. An audit is sufficiently detailed when it enables the Labor Commissioner, if requested, to determine the amount of forfeiture under California Code of Regulations section 16437, to draw reasonable conclusions as to compliance with the requirements of the Public Works Chapter of the Labor Code, and to enable accurate computation of underpayments of wages to workers and of applicable penalties and forfeitures.

The audit record form (presented as Attachment B) presumptively demonstrates sufficiency, when accompanied by a brief narrative identifying the Bid Advertisement Date of the contract for public work and summarizing the nature of the violation and the basis upon which the determination of underpayment was made.

**D. Notification of Violation to Contractor or Subcontractor**

After the LCPR has determined that violations of the prevailing wage laws have resulted in the underpayment of wages and has prepared an audit, notification shall be provided to the contractor and affected subcontractor of an opportunity to resolve the wage deficiency prior to a determination of the amount of forfeiture by the Labor Commissioner pursuant to these regulations. The contractor and affected subcontractor shall be provided at least 10 days following such notification to submit exculpatory information consistent with the "good faith mistake" factors set forth in Labor Code sections 1775(a)(2)(A)(i) and (ii). If, based upon the contractor's submission, the LCPR reasonably concludes that the failure to pay the correct wages was a good faith mistake, and has no knowledge that the contractor and affected subcontractor have a prior record of failing to meet their prevailing wage obligations, the LCPR shall not be required to request the Labor Commissioner for a determination of the amount of penalties to be assessed under Labor Code Section 1775 if the underpayment of wages to workers is promptly corrected and proof of such payment is submitted to the LCPR. For each instance in which a wage deficiency is resolved in accordance with this regulation, the LCPR shall maintain a written record of the failure of the contractor or subcontractor to meet its prevailing wage obligation. The record shall identify the public works project, the contractor or affected subcontractor involved, and the gross amount of wages paid to workers to resolve the prevailing wage deficiency; and the record shall also include a copy of the Audit prepared pursuant to Title 8 California Code of Regulations section 16432 (e) along with any exculpatory information submitted to the LCPR by the affected contractor or subcontractor.

**1.06 Reporting of Willful Violations to the Labor Commissioner**

If an investigation reveals that a willful violation of the Labor Code has occurred, the LCPR will conduct an audit and make a written report to the Labor Commissioner which shall include:

- a detailed report which shall accurately describe the nature of the alleged violation and a description of the evidence that supports said allegations,

- an audit consisting of a comparison of payroll records to the best available information as to the actual hours worked,
- the classification of workers employed on the public works contract, and any other additional investigative information as may be required to clarify the audit.

Reports will be submitted on all appropriate willful violations including intent to defraud and deliberate failure or refusal to comply with public works law. All reports will include a recommendation regarding the appropriateness of debarment. Principal areas of concern include, but are not limited to, the following violations.

A. Failure to Comply with Prevailing Wage Rate Requirements

Failure to comply with prevailing wage rate requirements (as set forth in the Labor Code and Chancellor's Office contracts) is determined a willful violation whenever less than the stipulated basic hourly rate is paid to tradesworkers, or if overtime, holiday rates, fringe benefits, and/or employer payments are paid at a rate less than stipulated. The facts related to such willful violations may result in a determination that the contractor intended to defraud its employees of their wages.

B. Falsification of Payroll Records, Misclassification of Work, and/or Failure to Accurately Report Hours of Work

Falsification of payroll records and failure to accurately report hours of work is characterized by deliberate underreporting of hours of work; underreporting the headcount; stating that the proper prevailing wage rate was paid when, in fact, it was not; clearly misclassifying the work performed by the worker; and any other deliberate and/or willful act which results in the falsification or inaccurate reporting of payroll records. Such violations are deemed to be willful violations committed with the intent to defraud.

C. Failure to Submit Certified Payroll Records

The contractors and subcontractors shall have 10 days after the end of each preceding week in which to comply with the requirement for submittal of payroll records that are complete and accurate. Upon any subsequent request for additional payroll information, the contractors and subcontractors shall have seven calendar days after receipt of notification from the LCPR to provide this additional documentation.

D. Failure to Make Employer Payments

Employer payments are defined as the amounts stipulated for fringe benefits or trust fund contributions and are determined to be part of the required prevailing wage rate. Failure to make employer payments or provide fringe benefits and/or make trust fund contributions in a timely manner is equivalent to payment of less than the stipulated wage rate and shall be reported to the Labor Commissioner, upon completion of an investigation and audit.

E. Failure to Pay the Correct Apprentice Rates and/or Misclassification of Workers as Apprentices

Failure to pay the correct apprentice rate or classifying a worker as an apprentice when not properly registered is equivalent to payment of less than the stipulated wage rate and shall be reported to the Labor Commissioner, upon completion of an investigation and audit.

F. For the Taking of Kickbacks

Accepting or extracting kickbacks from employee wages constitutes a felony and may be prosecuted by the appropriate enforcement agency (Labor Code section 1778).

**1.07 Enforcement Action**

A. Duty of the Awarding Body

The Chancellor's Office, as the awarding body having an LCP, has a duty to the Director of the Department of Industrial Relations to enforce Labor Code section 1720 *et seq.* in a manner consistent with the practice of the Division of Labor Standards Enforcement (DLSE), as set forth in regulations found at Title 8 California Code of Regulations section 16000 *et seq.*, and in accordance with Precedential Public Works Decisions issued by the Director and which are available at the Department of Industrial Relations Home Page ([www.dir.ca.gov](http://www.dir.ca.gov)) and links to that page.

The Chancellor Office shall undertake enforcement action in furtherance of its responsibilities as follows:

1. Review Certified Payroll Records

Certified payroll records furnished by contractors and subcontractors shall be regularly and timely reviewed by a Chancellor's Office LCPR to monitor payment of prevailing wages and to confirm the correct prevailing wage rates have been reported as paid for each classification of labor listed thereon. The Chancellor's Office LCPR shall review the submitted payroll records (that are furnished in accordance with Title 8 California Code of Regulations section 16421 (a) (3), and in a format prescribed in section 16401) within 30 days after receipt. "Confirmation" of payroll records furnished by contractors and subcontractors shall be defined as an independent corroboration of reported prevailing wage payments. Further definition of "Review" and "Confirmation" of Certified Payroll records can be found in Section 1.12 of this Labor Compliance Program.

2. Complaints

Upon receipt of a written complaint alleging that a contractor or subcontractor has failed to pay prevailing wages as required by the Labor Code, the Chancellor's Office LCPR shall do all of the following:

- a. Within 15 days after receipt of the complaint, send a written acknowledgment to the complaining party that the complaint has been received and identifying the name, address, and telephone number of the investigator assigned to the complaint;
- b. Within 15 days after receipt of the complaint, provide the affected contractor with the notice required under Labor Code section 1775(c) if the complaint is against a subcontractor;
- c. Notify the complaining party in writing of the resolution of the complaint within ten days after the complaint has been resolved by the Chancellor's Office;

- d. Notify the complaining party in writing at least once every 30 days of the status of a complaint that has not been resolved by the Chancellor's Office; and
  - e. Notify the complaining party in writing at least once every 90 days of the status of a complaint that has been resolved by the Chancellor's Office but remains under review or in litigation before another entity.
3. Apprenticeship
- a. In accordance with the duties of the Chancellor's Office with respect to apprenticeship standards, a Chancellor's Office LCPR will:
    - (1) inform contractors and subcontractors bidding public works about apprenticeship requirements;
    - (2) send copies of awards and notices of discrepancies to the Division of Apprenticeship Standards as required under Section 1773.3 of the Labor Code; and
    - (3) refer complaints and promptly report suspected violations of apprenticeship requirements to the Division of Apprenticeship Standards.
  - b. The Chancellor's Office shall be responsible for enforcing prevailing wage pay requirements for apprentices consistent with the practice of the Labor Commissioner, including:
    - (1) That any contributions required pursuant to Labor Code section 1777.5 (m) are paid to the appropriate entity,
    - (2) That apprentices are paid no less than the prevailing apprentice rate,
    - (3) That workers listed and paid as apprentices on the certified payroll records are duly registered as apprentices with the Division of Apprenticeship Standards, and
    - (4) Requiring that the regular prevailing wage rate be paid (i) to any worker who is not a duly registered apprentice and (ii) for all hours in excess of the maximum ratio permitted under Labor Code Section 1777.5 (g), as determined at the conclusion of the employing contractor or subcontractor's work on the public works contract.
4. Summary Report of Labor Compliance Activities
- For each public work project subject to Chancellor's Office LCP enforcement of prevailing wage requirements, the Chancellor's Office shall maintain a separate, written summary of labor compliance activities and relevant facts pertaining to that particular project in accordance with Title 8 California Code of Regulations section 16434 (d). That summary shall demonstrate that reasonable and sufficient efforts have been made to enforce prevailing wage requirements consistent with the practice of the Labor Commissioner (see Attachment C). The Chancellor's Office shall retain compliance records for a project until the later of (1) at least one year after the acceptance of the public work or five years after the cessation of all labor on a public work that has not been accepted, or (2) one year after a final decision or judgment in any litigation under Labor Code Section 1742. For purposes of this section, a written summary or report includes information maintained electronically, provided that the summary or report can be printed out in hard copy form or is in an electronic format

that (1) can be transmitted by e-mail or compact disk and (2) would be acceptable for the filing of documents in a federal or state court of record within this state.

B. On Site Monitoring

The Chancellor's Office LCPR shall conduct in-person inspections at the site or sites at which the contract for public work is performed (On-Site Visits) in accordance with Title 8 California Code of Regulations section 16432 (d). On-Site Visits will be conducted randomly or as LCPR deems necessary, but shall be undertaken during each week that workers are present at sites at which the public works is performed. All On-Site Visits shall include visual inspection of the following:

1. The copy of the determination(s) of the Director of Industrial Relations of the prevailing wage rate of per diem wages required to be posted at each job site in compliance with Labor Code section 1773.2, and
2. The Notice of Labor Compliance Program Approval required to be posted at the job site in accordance with Title 8 California Code of Regulations section 16429, that lists a telephone number to call for inquiries, questions, or assistance with regard to the Labor Compliance Program.

On-Site Visits may include other activities deemed necessary by the CPRR to independently corroborate prevailing wage payments reported on payroll records furnished by contractors and subcontractors.

C. Withholding Contract Payments for Violations of the Requirements of Chapter 1 of Part 7 of Division 2 of the Labor Code

The Chancellor's Office shall withhold contract payments when payroll records are delinquent or inadequate or when, after an investigation, it is established that underpayment of the prevailing wage has occurred. Where the violation is by a subcontractor, the contractor shall be notified of the nature of the violation and reference made to its rights under Labor Code section 1729. The Chancellor's Office will refer to the Director's ongoing advisory service of web-posted public works coverage determinations as a source of information and guidance in making enforcement decisions.

1. Withholding of Contract Payments for Delinquent or Inadequate Payroll Records  
The withholding of contract payments when payroll records are delinquent or inadequate is required by Labor Code section 1771.5(b) (5), and does not require the prior approval of the Labor Commissioner.

The Chancellor's Office shall only withhold those payments due or estimated to be due to the contractor or subcontractor whose payroll records are delinquent or inadequate, plus any additional amount that the Chancellor's Office LCPR has reasonable cause to believe may be needed to cover a back wage and penalty assessment against the contractor or subcontractor whose payroll records are delinquent or inadequate; *provided that* a contractor shall be required in turn to cease all payments to a subcontractor whose payroll records are delinquent or inadequate

until the Chancellor's Office provides notice that the subcontractor has cured the delinquency or deficiency.

When contract payments are withheld under this section, the Chancellor's Office LCPR shall provide the contractor and subcontractor, if applicable, with immediate written notice that includes all of the following:

- a. A statement providing that payments are withheld due to delinquent or inadequate payroll records, and identifying what records are missing or stating why records that have been submitted are deemed inadequate;
- b. The specific amount being withheld; and
- c. Information regarding the contractor's or subcontractor's right to request an expedited hearing to review the withholding of contract payments under Labor Code section 1742, limited to the issue of whether the records are delinquent or inadequate or the Labor Compliance Program has exceeded its authority under this section.

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

In addition to withholding contract payments based on delinquent or inadequate payroll records, penalties shall be assessed under Labor Code section 1776 (g) for failure to timely comply with a written request for certified payroll records. Pursuant to Labor Code section 1776, the general contractor and/or its subcontractors, shall, as a penalty to the Chancellor's Office on whose behalf the contract is awarded, forfeit twenty-five dollars (\$25) for each calendar day, or portion thereof, for each worker, for failure to provide certified or corrected records pursuant to this Labor Compliance Program until strict compliance is effectuated. The Chancellor's Office will obtain approval of the Labor Commissioner for the assessment of penalties under Labor Code section 1776 (g).

As explained more fully below, the Chancellor's Office will obtain approval from the Labor Commissioner of the amounts of unpaid penalty and wage money assessed by the Chancellor's Office ("forfeitures") for violations of the prevailing wage laws where those amounts total \$1,000.00 or more. Thereafter, the Chancellor's Office will provide notice of withholding of contract payments to the contractor and other affected parties (a subcontractor and bonding company, if applicable) as required by law. The procedures to be followed by the Chancellor's Office in obtaining approval of a forfeiture from the Labor Commissioner and providing notice of withholding to the contractor and other affected parties will be consistent with the code sections and regulations cited above, and definitions included herein, and are summarized below.

## 2. Forfeitures Assessed for Less than \$1,000.00

If the aggregate amount of forfeitures assessed as to a contractor or subcontractor is less than \$1000.00, the forfeitures shall be deemed approved by the Labor Commissioner upon service and the Labor Commissioner's receipt of copies of the following: The Notice of Withholding of Contract Payments authorized by Labor

Code section 1771.6 (a); An Audit as defined in Title 8 California Code of Regulations section 16432 (e); and a brief narrative identifying the Bid Advertisement Date of the contract for public work and summarizing the nature of the violation, the basis of the underpayment, and any factors considered to determine the assessment of penalties under Labor Code section 1775.

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

D. Forfeitures Requiring Approval by the Labor Commissioner

Where the Chancellor's Office LCPR requests a determination of the amount of forfeiture, the request shall include a file or report to the Labor Commissioner (see Attachment D) which contains at least the following information:

1. Whether the public work has been accepted by Chancellor's Office and whether a valid notice of completion has been filed, the dates if any when those events occurred, and the amount of funds held in retention by Chancellor's Office;
2. Any other deadline which, if missed, would impede collection;
3. Evidence of violation in narrative form;
4. Evidence of violation obtained under Title 8 California Code of Regulations section 16432 and a copy of the Audit prepared in accordance with Title section 16432 (e) setting forth the amounts of unpaid wages and applicable penalties;
5. Evidence that the contractor was given the opportunity to explain why it believes there was no violation; or that any violation was caused by mistake, inadvertence, or neglect before the forfeiture was sent to the Labor Commissioner, and the contractor either did not do so or failed to convince the awarding body of its position;

Note: A report requesting approval of the amount of a proposed forfeiture only assessed for delinquent or inadequate payroll records pursuant to Labor Code section 1776 (g) need only refer to evidence that the contractor failed to provide certified payroll records or basic payroll records (see section 1.07-A) within ten (10) days of receipt of the request, and the amount of the proposed forfeiture for delinquent or inadequate payroll records calculated at twenty-five dollars (\$25) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated.

6. Where the Chancellor's Office LCPR seeks not only amounts of wages but also a penalty under Labor Code section 1775 as part of the forfeiture, and the contractor or subcontractor has unsuccessfully contended that the cause of the violation was a good faith mistake, a short statement should recommend a penalty amount (computed at not more than fifty dollars (\$50) for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rates), and reasons therefore; if the amount

of wages sought involves overtime, penalties under Labor Code section 1813 should be calculated as follows: twenty-five dollars (\$25) for each calendar day during which each worker was required or permitted to work more than eight hours in any one calendar day and 40 hours in any one calendar week;

7. Where the Chancellor's Office LCPR seeks only wages or a penalty less than \$50 per day as part of the forfeiture, and the contractor has successfully contended that the cause of violation was a good faith mistake, a short statement should recommend a penalty amount, and reasons therefore, pursuant to Labor Code section 1775; if the amount of wages sought involves overtime, penalties under Labor Code section 1813 should be calculated as follows: twenty-five dollars (\$25) for each calendar day during which each worker was required or permitted to work more than eight hours in any one calendar day and 40 hours in any one calendar week;
8. Whether the contractor or subcontractor has a prior record of failing to meet its prevailing wage obligations;
9. Whether the LCP for the Chancellor's Office has been granted approval only on an interim or temporary basis under Title 8 California Code of Regulations section 16425 or 16426 or whether it has been granted extended approval under section 16427.

The report should be served on the Labor Commissioner as soon as practicable after the violation has been discovered, and not less than thirty days before final payment, but in no event later than 320 days after the Chancellor's Office's acceptance of the public work or 320 days after the filing of a valid Notice of Completion in the Office of the County Recorder, whichever occurs last. A copy of the file or report shall be served on all parties (the contractor, subcontractor and the surety) at the same time as it is sent to the Labor Commissioner.

The Labor Commissioner shall affirm, reject, or modify the forfeiture in whole or in part as to penalty and/or wages due. The determination of the forfeiture by the Labor Commissioner is effective on the following date pursuant to Title 8 California Code of Regulations section 16426: on the date the Labor Commissioner serves by first class mail, on the Chancellor's Office and on the contractor, an endorsed copy of the proposed forfeiture, or a newly drafted forfeiture statement which sets out the amount of forfeiture approved. Service on the contractor is effective if made on the last address supplied by the contractor in the record. The Labor Commissioner's approval, modification or disapproval of the proposed forfeiture shall be served within 30 days of receipt of the proposed forfeiture.

E. Deposits of Penalties and Forfeitures Withheld

1. Where the involvement of the Labor Commissioner has been limited to a determination of the actual amount of penalty, forfeiture, or underpayment of wages, and the matter has been resolved without litigation by or against the Labor

Commissioner, the Chancellor's Office shall deposit penalties and forfeitures into its General Fund.

2. Where collection of fines, penalties, or forfeiture results from court action to which the Labor Commissioner and the Chancellor's Office are both parties, the fines, penalties, and forfeitures shall be divided between the General Funds of the State and the Chancellor's Office, as the court so deems.
3. All amounts recovered by suit brought by the Labor Commissioner, and to which the Chancellor's Office is not a party, shall be deposited in the General Fund of the State of California.
4. All wages and benefits which belong to a worker and are withheld or collected from a contractor or subcontractor, either by withholding or as a result of court action pursuant to Labor Code section 1775, and which have not been paid to the worker or irrevocably committed on the worker's behalf to a benefits fund, shall be deposited with the Labor Commissioner, who will deal with such wages and benefits in accordance with Labor Code section 96.7.

F. Debarment Policy

It is the Chancellor's Office policy that the public works prevailing wage requirements set forth in the California Labor Code sections 1720-1861 shall be strictly enforced. In furtherance thereof, construction contractors and subcontractors found to be repeat violators of the California Labor Code shall be referred to the Labor Commissioner for debarment from bidding on or otherwise awarded any public work contract, within the state of California, for the performance of construction and/or maintenance services for the period not to exceed three (3) years in duration. The duration of the debarment period shall depend upon the nature and severity of the Labor Code violations and any mitigating and/or aggravating factors, which may be presented at the hearing conducted by the Labor Commissioner for such purpose.

## **1.08 Notification of Withhold to Contractor and Appeal Rights of Program Enforcement Action**

### **A. Notice of Withholding of Contract Payments (NWCP)**

After determination of the amount of forfeiture by the Labor Commissioner, the Chancellor's Office shall provide Notice of Withholding of Contract Payments (NWCP) to the contractor and subcontractor, if applicable. The notice shall be in writing and shall describe the nature of the violation and the amount of wages, penalties, and forfeitures withheld. Service of the notice shall be completed pursuant to section 1013 of the Code of Civil Procedure by first-class and certified mail to the contractor and subcontractor, if applicable. Notice to the contractor shall be deemed notice to its performance bond surety. The notice shall advise the contractor and subcontractor, if applicable, of the procedure for obtaining review of the withholding of contract payments. The Chancellor's Office shall also serve a copy of the notice by certified mail to any bonding company issuing a bond that secures the payment of wages covered by the notice and to any surety on such bond, if their identities are known to the awarding body. The NWCP form and the accompanying Notice of Right to Obtain Review—Formal Hearing, to be utilized by the Chancellor's Office, are found as Attachment E to this document.

### **B. Review of NWCP**

1. An affected contractor or subcontractor may obtain review of a NWCP under this chapter by transmitting a written Request for Review form (Attachment F) to the Chancellor's Office, to the attention of the LCPR at the office that appears on the NCWP, within 60 days after service of the NWCP. If no hearing is requested within 60 days after service of the NWCP, the NWCP shall become final.
2. Within ten days following the receipt of the Request for Review, the LCPR shall transmit to the Department of Industrial Relations, Office of the Director-Legal Unit, the Request for Review and copies of the NWCP, along with any audit summary that accompanied the notice, and a proof of service or other documents showing the name and address of any bonding company or surety that secures the payment of the wages covered by the notice. A copy of the required Notice of Transmittal form to be utilized by the Chancellor's Office is found as Attachment G to this document.
3. The Chancellor's Office may be represented by an attorney in prevailing wage hearings conducted pursuant to Labor Code section 1742 (b) and sections 17201 – 17270 of Title 8 of the California Code of Regulations.
4. Upon receipt of a timely request, a hearing shall be commenced within 90 days before the director, who shall appoint an impartial hearing officer possessing the qualifications of an administrative law judge pursuant to subdivision (b) of Section 11502 of the Government Code. The appointed hearing officer shall be an employee of the department, but shall not be an employee of the Division of Labor Standards Enforcement.

The contractor or subcontractor shall be provided an opportunity to review evidence to be utilized by the Chancellor's Office LCPR at the hearing within 20 days of the receipt of the written request for a hearing. Any evidence obtained by the Chancellor's Office LCPR subsequent to the 20-day cutoff shall be promptly disclosed to the contractor or subcontractor. A copy of a Notice of Opportunity to Review Evidence Pursuant to Labor Code section 1742 (b) form is found as Attachment H to this document. The Request to Review Evidence form for the contractor to utilize is found as Attachment I.

The contractor or subcontractor shall have the burden of proving that the basis for the NWCP is incorrect. The NWCP shall be sufficiently detailed to provide fair notice to the contractor or subcontractor of the issues at the hearing.

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

The Director has adopted regulations setting forth procedures for hearings under this subdivision. The regulations are found as Attachment J to this document.

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

8. This procedure shall provide the exclusive method for review of a NWCP by the Chancellor's Office to withhold contract payments pursuant to Labor Code section 1771.7.

C. Liquidated Damages

1. After 60 days following the service of a Notice of Withholding under subdivision (a) of Labor Code section 1771.6, the affected contractor, subcontractor, and surety on a bond or bonds issued to secure the payment of wages covered by the assessment or notice shall be liable for liquidated damages in an amount equal to the wages, or portion thereof, that still remain unpaid. If the Notice subsequently is overturned or modified after administrative or judicial review, liquidated damages shall be payable only on the wages found to be due and unpaid.

Additionally, if the contractor or subcontractor demonstrates to the satisfaction of the Director that he or she had substantial grounds for appealing the Notice with respect to a portion of the unpaid wages covered by the Notice, the Director may exercise his or her discretion to waive payment of the liquidated damages with respect to that portion of the unpaid wages. Any liquidated damages shall be distributed to the employee along with the unpaid wages.

2. Notwithstanding subsection (1), there shall be no liability for liquidated damages if the full amount of the assessment or notice, including penalties, has been deposited with the Department of Industrial Relations, within 60 days following service of the assessment or notice, for the Department to hold in escrow pending administrative and judicial review. The Department shall release such funds, plus any interest earned, at the conclusion of all administrative and judicial review to the persons and entities that are found to be entitled to such funds.

3. Settlement Authority

Except in cases where the Labor Commissioner has intervened pursuant to 8 CCR section 16439 (b), the Chancellor's Office Labor Compliance Program shall have the authority to prosecute, settle, or seek the dismissal of any Notice of Withholding of Contract Payments issued pursuant to Labor Code Section 1771.6 and any review proceeding under Labor Code Section 1742, without any further need for approval by the Labor Commissioner. Whenever a Chancellor's Office Labor Compliance Program settles in whole or in part or seeks and obtains the dismissal of a Notice of Withholding of Contract Payments or a review proceeding under Labor Code Section 1742, the Labor Compliance Program shall document the reasons for the settlement or request for dismissal and shall make that documentation available to the Labor Commissioner upon request.

## **1.09 Priority Distribution of Forfeited Sums**

A. Withholding of Forfeited Sums

1. Before making payments to the contractor of money due under a contract for public work, the Chancellor's Office shall withhold and retain from sums owing Contractor,

if any, all amounts required to satisfy the NWCP. The amounts required to satisfy the NWCP shall not be disbursed by the Chancellor's Office until receipt of a final order that is no longer subject to judicial review.

2. Pending a final order, or the expiration of the time period for seeking review of the notice of the withholding, the Chancellor's Office shall not disburse any contract payments withheld.

**B. Priority Distribution of Forfeited Sums**

1. From the amount recovered, the wage claim shall be satisfied prior to the amount being applied to penalties. If insufficient money is recovered to pay each worker in full, the money shall be prorated among all workers employed on the public works project who are paid less than the prevailing wage rate. These payments shall have PRIORITY over all Stop Notices filed against the prime contractor.
2. Wages for workers who cannot be located shall be placed in the Industrial Relations Unpaid Fund and held in trust for the workers pursuant to Section 96.7. Penalties shall be paid into the General Fund of the Chancellor's Office pursuant to Section 1771.7.
3. If insufficient funds are withheld, recovered, or both, to pay each underpaid worker in full, the money shall be prorated among all said underpaid workers.

**1.10 Outreach Activities**

To ensure the successful implementation of the Chancellor's Office Labor Compliance Program, there shall be several outreach activities initiated and maintained.

**A. Providing Information to the Public**

The LCPR shall be responsible for communication and outreach activities relative to public information on the Chancellor's Office Labor Compliance Program:

1. Regular presentations to contractors at all Job Walk Meetings (Pre-Bid conferences) and Job Start Meetings (Pre-Job conferences);
2. Ongoing communication via correspondence and with workers at job sites when review of the certified payroll records reveals the possibility of prevailing wage violations.
3. Periodic meetings with contractor organizations, prime contractors and subcontractors interested in public works contracting with the Chancellor's Office.

**B. In-service Management training on the Labor Compliance Program**

The Labor Compliance Program shall provide ongoing management, in-servicing and workshops for the campus Facilities, Business, Accounting and legal staff relative to the terms, requirements and administration of the Chancellor's Office Labor Compliance Program.

C. Additional Training

The Chancellor's Office is aware of and will take advantage of any training that the Labor Commissioner may provide, sponsor, or endorse on how to enforce prevailing wage requirements, including but not necessarily limited to the following subjects:

1. Ascertaining prevailing wage requirements and rates from the Division of Labor Statistics and Research,
2. Monitoring and investigation under Title 8 of the California Code of Regulations section 16432,
3. Enforcement responsibilities under Title 8 of the California Code of Regulations sections 16434-16439, and
4. Procedural requirements and responsibilities as an enforcing agency under Labor Code sections 1741-1743 and 1771.6 and Title 8 of the California Code of Regulations sections 17201-17270.

**1.11 Annual Reports**

A. Annual Report on the Chancellor's Office Labor Compliance Program to the Director of the Department of Industrial Relations

The Chancellor's Office will submit to the Director of the Department of Industrial Relations an annual report on the operation of its LCP within sixty (60) days after the close of its fiscal year, using the appropriate Annual Reporting form.

B. Contents of the Annual Report

The annual report will contain, as a minimum, the following information:

1. Progress report on the Labor Compliance Program.
2. Fiscal year-end summary of:
  - a. All projects handled by LCP within last 12 months.
  - b. Summary of all wages and penalties assessed and/or recovered.
  - c. Listing of any amount identified in section b for which approval of forfeiture not requested from the Labor Commissioner, with explanation.
  - d. Listing of any amount identified in section b for which approval of forfeiture was requested from Labor Commissioner showing amounts assessed and recovered by project.
  - e. Identify cases that are/were subject on Labor Code section 1742 proceedings.
  - f. If contractor is referred to Labor Commissioner for debarment per Labor Code section 1777.1, identify the affected contractor(s) or subcontractor(s) and dates of referral.
  - g. If apprenticeship violation is referred to Division of Apprenticeship Standards, identify the affected contractor(s) or subcontractor(s) and dates of referral.
3. The number of public works contracts awarded pursuant to either the Kindergarten-University Public Education Facilities Bond Act of 2002 or the Kindergarten-University Public Education Facilities Bond Act of 2004, and their total value;

4. A summary of wages due to workers resulting from failure by contractors to pay prevailing wage rates; the total amount withheld from money due the contractors; and the total amount recovered by action in any court of competent jurisdiction;
5. A summary of penalties and forfeitures imposed and withheld, or recovered in a court of competent jurisdiction; and
6. A special summary of all audits that were conducted upon the request of the Labor Commissioner.

### **1.12 Definitions**

“Amount equal to the underpayment” is the total of the following determined by payroll review, investigation, audit, or admission of the contractor or subcontractor:

- a. The difference between amounts paid workers and the correct General Prevailing Rate of Per Diem Wages, as defined in Labor Code section 1773, and determined to be the prevailing rate due workers in such craft, classification or trade in which they were employed and the amounts paid; Wage Rate of Per Diem Wages as defined in Title 8 California Code of Regulations section 16000, *et seq.*;
- b. The difference between amounts paid on behalf of workers and the correct amounts of Employer Payments, as defined in Labor Code section 1773.1 and determined to be part of the prevailing rate costs of contractors due for employment of workers in such craft, classification or trade in which they were employed and the amounts paid; The difference between the amounts paid to workers and the correct amounts of employer payments, as defined in Title 8 California Code of Regulations section 16000, *et seq.* and determined to be part of the prevailing rate costs of contractors due for employment of workers in such craft, classification or trade in which they were employed and the amounts paid.
- c. Estimated amounts of “illegal taking of wages,” and
- d. Amounts of apprenticeship training contributions paid to neither the program sponsor’s training trust nor the California Apprenticeship Council.
- e. Estimated penalties under Labor Code sections 1775, 1776, and 1813.

“Basic Payroll Records” means time cards, front and back copies of cancelled checks, cash receipts, trust fund forms, daily logs, employee sign-in sheets, accounting ledgers, tax forms and/or any other record maintained for the purposes of reporting payroll.

“Contracts,” except as otherwise provided by agreement, means only contracts under a single master contract, or contracts entered into as stages of a single project which may be the subject of withholding pursuant to Labor Code sections 1720, 1720.2, 1720.3, 1720.4, 1771, and 1771.5;

"Confirmation" of payroll records furnished by contractors and subcontractors shall be defined as an independent corroboration of reported prevailing wage payments. Confirmation may be accomplished through:

- a. Worker Interviews, examination of paychecks or paycheck stubs, direct confirmation of payments from third party recipients of "Employer Payments" (as defined at section 16000

of Title 8 of the California Code of Regulations), or any other reasonable method of corroboration.

- b. For each month in which a contractor or subcontractor reports having workers employed on the public work, confirmation of furnished payroll records shall be undertaken randomly for at least one worker for at least one weekly period within that month.
- c. Confirmation shall also be undertaken whenever complaints from workers or other interested persons or other circumstances or information reasonably suggest to the Chancellor's Office that payroll records furnished by a contractor or subcontractor are inaccurate.

"Delinquent payroll records" means those not submitted on the basis set forth in the Chancellor's Office contract and the Labor Compliance Program;

"Failing to pay the correct rate of prevailing wages" means those public works violations which the Labor Commissioner has exclusive authority to approve before they are recoverable by the Chancellor's Office, and which are appealable by the contractor in court or before the Director of the Department of Industrial Relations under Labor Code sections 1742 and 1742.1 pursuant to Title 8 California Code of Regulations sections 17201 through 17270. Regardless of what is defined as prevailing "wages" in contract terms, noncompliance with the following are considered failures to pay prevailing wages:

- a. Nonpayment of items defined as "Employer Payments" and "General Prevailing Rate of Per Diem Wages" in Title 8 California Code of Regulations section 16000 and Labor Code section 1771.
- b. Payroll records required by Labor Code sSection 1776;
- c. Labor Code section 1777.5 but only insofar as the failure consists of paying apprentice wages lower than the journey level rate to a worker who is not an apprentice as defined in Labor Code section 3077, working under an apprentice agreement in a recognized program;
- d. Labor Code section 1778, Kickbacks;
- e. Labor Code section 1779, Fee for Registration;
- f. Labor Code sections 1813, 1815, and Title 8 California Code of Regulations section 16200(a)(3)(F) overtime for work over eight (8) hours in any one (1) day or forty (40) hours in any one (1) week (Monday through Friday). All work performed on Saturday, Sunday, and/or a holiday shall be paid pursuant to the prevailing wage determination.

"Forfeitures" are the amounts of unpaid penalties and wages assessed by the Chancellor's Office for violations of the prevailing wage laws, whether collected by withholding from the contract amount, by suit under the contract, or both. The Chancellor's Office will notify the contractor/subcontractor of their right to a settlement conference to determine the appropriateness of amounts withheld. Notice to Contractor shall be deemed notice to its performance bond surety. Forfeitures" means the amount of wages, penalties, and forfeitures assessed by the Chancellor's Office and proposed to be withheld pursuant to Labor Code section 1771.6(a), and includes the following:

- a. The difference between the prevailing wage rates and the amount paid each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate by the contractor or subcontractor; and
- b. Penalties assessed under Labor Code sections 1775, 1776, 1813.

“Inadequate payroll records” are any one of the following:

- a. A record lacking any of the information required by Labor Code section 1776;
- b. A record which contains all of the required information but is not certified, or is certified by someone who is not an agent of the contractor or subcontractor;
- c. A record remaining uncorrected for one (1) payroll period, after the Chancellor’s Office has given the contractor notice of inaccuracies detected by audit or record review; provided, however, that prompt correction will stop any duty to withhold if such inaccuracies do not amount to one percent (1%) of the entire certified weekly payroll in dollar value and do not affect more than half the persons listed as workers employed on that certified weekly payroll, as defined in Labor Code section 1776 and Title 8 California Code of Regulations section 16401. Prompt correction will stop any duty to withhold if such inaccuracies are *de minimus*.

"Review" for this purpose of the Review Certified Payroll Records shall be defined as inspection of the records furnished to determine if:

- a. All appropriate data elements identified in Labor Code section 1776 (a) have been reported;
- b. Certification forms have been completed and signed in compliance with Labor Code section 1776 (b); and
- c. Correct prevailing wage rates have been reported as paid for each classification of labor listed thereon, with confirmation of payment in the manner and to the extent defined above.

“Withhold” means to cease payments by the awarding body, or others who pay on its behalf, or agents, to the general contractor.

**THE CALIFORNIA STATE UNIVERSITY  
CHANCELLOR'S OFFICE**

**LABOR COMPLIANCE PROGRAM**

**2.00 – ATTACHMENTS / FORMS**

**2.00 Attachments / Forms**

This section contains the attachments and forms applicable to the Chancellor’s Office Labor Compliance Program.

Attachments

ID	Name
A	Labor Compliance Checklist
B	Audit Record Form(s)
C	Single Project Labor Compliance Review and Enforcement Report Form
D	Request for Approval of Forfeiture
E	Notice of Withholding of Contract Payments and Notice of Right to Obtain Review—Formal Hearing Notice of Temporary Withholding of Contract Payments
F	Request for Review
G	Notice of Transmittal
H	Notice of Opportunity to Review Evidence
I	Request to Review Evidence
J	Prevailing Wage Hearing Regulations

Forms

Form Name	Form No.
Payroll Reporting Form .....	CSU.LC-01
Statement of Compliance .....	CSU.LC-02
Authorization to Certify .....	CSU.LC-03
Non-Performance Report .....	CSU.LC-04
Fringe Benefit Statement .....	CSU.LC-05
Authorization for Payroll Deduction .....	CSU.LC-06
Apprentices on Public Work Projects/ Summary of Requirements .....	DAS PW
Public Works Contract Award Information .....	DAS 140
Request for Dispatch of Apprentice.....	DAS 142
Training Fund Contributions, California Apprenticeship Council .....	CAC2
Sample Letter: 1 <sup>st</sup> Demand for Certified Payrolls.....	none
Certified Payroll and Payroll Records Request Form.....	none
Annual Reporting Form .....	LCP- AR1

## CSU.LC-00: LABOR COMPLIANCE CHECKLIST

### REQUIRED DOCUMENTATION / SUBMISSIONS

Entire checklist pertains to both the Prime Contractor and all subcontractors performing work on projects utilizing any funds from the Kindergarten-University Public Education Facilities Bond Act of 2002 or 2004. Adherence to **all** of these procedures will assure full compliance and insure timely payments throughout the course of the project. Contractor or subcontractor neglect of any of these items may result in rejection of submittals, payment interruptions, and penalty assessment.

- **Prevailing Wage Required:** The award of a public works contract requires that all workers employed in the on the project must be paid not less than the specified general prevailing wage rates by the contractor and its subcontractors for the work classification in which they are performing.

The Contractor is responsible for ascertaining and complying with all applicable general prevailing wage rates for tradesworkers and any rate changes that may occur during the term of the contract. Prevailing wage rates and rate changes are to be posted at the job site for workers to view. Prevailing wage determinations can be obtained at: [www.dir.ca.gov/DLSR/PWD/index.htm](http://www.dir.ca.gov/DLSR/PWD/index.htm).

- **Overtime:** The time of service of any worker employed upon public work is limited and restricted to eight hours during any one calendar day, and 40 hours during any one calendar week (Labor Code Section 1811). Overtime (not less than 1-1/2 times basic rate of pay) must be paid for all work performed by employees on public work in excess of eight hours per day, and 40 hours during any one week (Labor Code Section 1815).
- **Apprentices:** Contractor and subcontractors shall employ registered apprentices on public works projects in accordance with Labor Code Section 1777.5.
- **Penalties:** Penalties, including forfeitures and debarment, shall be imposed for Contractor or subcontractor failure to pay prevailing wages, failure to maintain and submit all requested documentation, failure to employ apprentices, failure to pay overtime, and failure to pay employees for all hours worked at the correct prevailing wage rate, in accordance with Labor Code Sections 1775, 1776, 1777.7, and 1813.
- **Certified Payroll Records:** Per Labor Code Section 1776, contractors and subcontractors are required to keep accurate payroll records which reflect the name, address, social security number, and work classification of each employee; the straight time and overtime hours worked each day and each week; the fringe benefits; and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee hired in connection with a public works project.

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

Contractors and subcontractors shall maintain their certified payrolls on a weekly basis and shall submit said payrolls weekly to the Chancellor's Office. Prime Contractors are responsible for the submittal of their payrolls and those of their respective subcontractors. In the event that there has been no work performed during a given week, the Certified Payroll Record shall be annotated "No Work" for that week.

Under Labor Code Section 1776(g) there are penalties required for contractor's/subcontractor's failure to maintain and submit copies of certified payroll records on request.

- **Nondiscrimination in Employment:** Prohibitions against employment discrimination are contained in Labor Code Sections 1735 and 1777.6; the Government Code; the Public Contracts Code; and Title VII of the Civil

Rights Act of 1964, as amended. All contractors and subcontractors are required to implement equal employment opportunities as delineated below:

- a. **Equal Employment Poster:** The equal employment poster shall be posted at the job site in a conspicuous place visible to employees and employment applicants for the duration of the project.
  - b. **Records:** The contractor and each subcontractor shall maintain accurate records of employment information as required by the Monthly Employment Utilization Report. This report shall specify the ethnicity and gender for each employee in a craft, trade, or classification.
  - c. **Reports:** A Monthly Employment Utilization Report for the contractor **and** for each of its subcontractors is required to be completed and submitted via fax to the Chancellor's Office Labor Compliance Program Representative office each month by no later than the fifth day of that month. Reports are to be for the previous month's work and are to be project specific. If no work was performed during that month, the form shall clearly state "No Work."
- **Kickback Prohibited:** Per Labor Code Section 1778, contractors and subcontractors are prohibited from accepting, taking wages illegally, or extracting "kickback" from employee wages;
  - **Acceptance of Fees Prohibited:** Contractors and subcontractors are prohibited from exacting any type of fee for registering individuals for public work (Labor Code Section 1779); or for filling work orders on public works contracts (Labor Code Section 1780);
  - **Listing of Subcontractors:** Contractors are required to list all subcontractors hired to perform work on a public works project when that work is equivalent to more than one-half of one percent of the total effort (Government Code Section 4100, *et seq.*);
  - **Proper Licensing:** Contractors and subcontractors are required to be properly licensed. Penalties will be imposed for employing workers while unlicensed (Labor Code Section 1021 and Business and Professions Code Section 7000, *et seq.* under California Contractors License Law);
  - **Unfair Competition Prohibited:** Contractors and subcontractors are prohibited from engaging in unfair competition (Business and Professions Code Sections 17200-17208);
  - **Workers' Compensation Insurance:** All contractors and subcontractors are required to be insured against liability for workers' compensation, or to undertake self-insurance in accordance with the provisions of Labor Code Section 3700 (Labor Code Section 1861);
  - **OSHA:** Contractors and subcontractors are required to comply with the Occupational, Safety and Health laws and regulations applicable to the particular public works project.
  - **Undocumented Workers:** Federal law prohibits contractors and subcontractors from hiring undocumented workers and requires contractors and subcontractors to secure proof of eligibility/citizenship from all workers.
  - **Itemized Wage Statements:** Contractors and subcontractors are required to provide itemized wage statements to employees under Labor Code Section 226.
  - **Employee Interviews** of both Contractor and all subcontractors will be conducted and must be allowed. If the worker selected to be interviewed does not speak English, an interpreter must be provided by the Contractor.
  - **Travel & Subsistence:** The Contractor and subcontractors shall make travel and subsistence payments as defined in the applicable collective bargaining agreement, under each classification, filed with the Director of

Industrial Relations. See the DIR web site: [www.dir.ca.gov/DLSR/PWD/index.htm](http://www.dir.ca.gov/DLSR/PWD/index.htm). Proof of payment is required (Labor Code Section 1773.8).

### REQUIRED DOCUMENTATION

Contractor and subcontractors shall include the actual Project Bid Title and Project ID Number on **ALL SUBMITTED DOCUMENTS**. Contractor is responsible to know this information and share it with all subcontractors at the time contracts are awarded. Project Bid Title and Project ID Number shall be placed on the outside of the envelopes used for submission of these documents. Failure to comply with these procedures for submittal identification may be cause for rejection of a submittal. The Chancellor's Office forms listed herein are available on the internet at the following address: [www.calstate.edu/CPDC/CM](http://www.calstate.edu/CPDC/CM), under 'Labor Compliance.'

1. **Certified Payroll Records** (Form CSU.LC-01) are to be submitted by Contractor and all subcontractors for each week work is performed, from commencement of work on the project through the final week worked. Certified Payroll Records shall be on the payroll reporting form provided by the Chancellor's Office, or shall contain the same information as that form or the one provided by the Division of Labor Standards Enforcement at the following web site: [www.dir.ca.gov/DLSE/DLSEFormA-1-131.pdf](http://www.dir.ca.gov/DLSE/DLSEFormA-1-131.pdf), and shall be in accordance with Labor Code Section 1776.

The Labor Code states that responsibility for timely and accurate submittal of certified payroll data by both the Contractor and all subcontractors lies with the Contractor. Contractor shall distribute this information to all subcontractors and sub-tier contractors employed on this project and strictly monitor their compliance to avoid potential penalties and/or payment delays.

- a. Payroll Numbering: Certified payrolls must be numbered in consecutive order beginning with the first week worked and ending when the payroll marked "Final" has been submitted. Include all Non-Performance Reports in the consecutive count. If a Contractor or subcontractor returns to the project after previously submitting a certified payroll marked "Final," Contractor or subcontractor shall resume numbering from the point the first "Final" was submitted and continue until work is finished and another "Final" has been executed. Non-Performance Reports are required and are to be included in this consecutive count.
  - b. Classifications: Contractor or subcontractor shall be certain to list the exact labor classification for each worker employed, including group or step number. If an employee is performing work in multiple classifications, separate entries for each classification's time should be entered on the Certified Payroll.
  - c. Final Payroll: Certified Payroll for the final week worked on the project must be labeled "Final."
2. **Statement of Compliance** (Form CSU.LC-02) must accompany each Certified Payroll or Non-Performance Report certifying under penalty of perjury that the information presented is true and correct. The statement must be certified (signed) with the original wet signature of the registered owner of the business or an authorized agent acting on their behalf.
  3. **Authorization to Certify** (Form CSU.LC-03) is used to authorize an individual other than the registered owner of the business to certify (sign) the weekly Statement of Compliance. It must be submitted along with the first Certified Payroll report, and subsequently, should the certifying person change.
  4. **Non-Performance Report** (Form CSU.LC-04) must be submitted for any payroll period in which no work was executed, beginning the first week worked until payroll marked "Final" has been received. Should the Contractor or subcontractor return to a project after submitting a "Final" Certified Payroll Report, Non-Performance Reports will again become necessary for both the current work period AND the gap between the two work periods. During extended periods of non-activity, a single Non-Performance Payroll form can serve for up to one month of consecutive non-performance.

5. **Fringe Benefit Statement** (Form CSU.LC-05) must be submitted along with the first Certified Payroll, which is due no later than ten days after commencement of work on the project. Fringe benefits (health and welfare, pension, vacation, etc.) must be included as part of an employee's hourly wage and this form will detail to whom the benefits will be paid.

When fringe benefits are paid directly to the employee, it should be so stated on this form. Any changes in fringe benefit amounts paid due to prevailing wage increases will require the submittal of a supplemental Fringe Benefit Statement reflecting the changes. It is the responsibility of the Contractor and subcontractors to know when such increases do occur and make the necessary adjustments.

6. **Employee Deduction Authorization Forms** (Form CSU.LC-06) must be attached to the Certified Payroll and Statement of Compliance wherever "Other Deductions" may have occurred. Alimony, child support, and any other court-ordered wage deductions or garnishments must be accompanied by the supporting court documentation. Companies using the "Other" column to reflect vacation fringe benefit payments deducted after taxing should include a written explanation on company letterhead. Regular and consistent weekly deductions can be authorized with a single explanation and supporting documentation.
7. **Apprentice Agreements** must be submitted for all apprentices employed on the project in order to demonstrate their registration in a bona fide, approved apprenticeship program. Submit this agreement with the Certified Payroll for the apprentice's first week worked. Where listing of an apprentice is not accompanied by a valid Apprentice Agreement, the employee is to be paid full journeyman wages for the craft he/she is performing. All other requirements of Labor Code Section 1777.5 regarding the utilization of apprentices on public works projects are applicable (Division of Apprenticeship Standards Summary of Requirements and Form DAS 140).

**Helpful Web Sites:**

California General Prevailing Wage Rates: [www.dir.ca.gov/DLSR/PWD/index.htm](http://www.dir.ca.gov/DLSR/PWD/index.htm)

Division of Labor Statistics and Research: [www.dir.ca.gov/DLSR/statistics\\_research.html](http://www.dir.ca.gov/DLSR/statistics_research.html)

Division of Labor Standards Enforcement: [www.dir.ca.gov/DLSE/dlse.html](http://www.dir.ca.gov/DLSE/dlse.html)

Division of Apprenticeship Standards: [www.dir.ca.gov/DAS/das.html](http://www.dir.ca.gov/DAS/das.html)

California Apprenticeship Council: [www.dir.ca.gov/CAC/cac.html](http://www.dir.ca.gov/CAC/cac.html)

**Certification**

In accordance with State laws, along with the Chancellor’s Office Contract Documents, the undersigned Contractor hereby certifies that he/she will comply with all labor law requirements and fully understands that failure to comply will subject Contractor to payment withholds, penalties, and forfeitures as prescribed by State law. The Prime Contractor further acknowledges that all Labor Compliance requirements and submission procedures were thoroughly explained to the Prime Contractor and listed subcontractors at the Labor Compliance portion of the Preconstruction Meeting for this project. In the event a listed or substituted subcontractor was not in attendance at the meeting, the Prime Contractor assumes responsibility of informing said subcontractor of all Labor Compliance requirements and submission procedures and enforcing compliance.

All Labor Compliance submissions shall be mailed or hand-delivered weekly to:

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**Acknowledgement**

<i>I acknowledge that all Labor Compliance requirements and submission procedures were thoroughly explained at today’s Preconstruction Meeting. If a listed subcontractor was not in attendance at this Preconstruction Meeting today, the Prime Contractor below will be responsible to inform said subcontractor of all Labor Compliance requirements and submission procedures.</i>	
Project:	_____
	_____
	Contractor
By:	_____
	Signature
	_____
	Printed Name of Person Signing
	_____
	Title
	_____
	Date
	_____
<b>The California State University, Chancellor’s Office</b>	
By:	_____
	Labor Compliance Program Representative
	_____
	Date

Any labor-related questions may be directed to the Labor Compliance Office for the California State University, Chancellor’s Office.



## **ATTACHMENT B**

### **Labor Compliance Program Regulations – Appendix B**

Audit Record Worksheets [8 Cal. Code Reg. §16432]

- Public Works Investigation Worksheet
- Public Works Audit Worksheet
- Prevailing Wage Determination Summary

PUBLIC WORKS INVESTIGATION WORKSHEET

DEPT. OF INDUSTRIAL RELATIONS - DIVISION OF LABOR STANDARDS ENFORCEMENT

EMPLOYEE'S NAME	SOCIAL SECURITY NUMBER										DEPUTY			OFFICE			EMPLOYER			Case Number	
	HOURS OF WORK			TOTAL DAYS WORKED	TOTAL HOURS WORKED	ACTUAL RATE	OTHER COMPEN-SATION	TOTAL WAGES PAID	Required Wage Rates Sl,Ol,Dt	OTHER COMPEN-SATION	TOTAL WAGES REQUIRED	AMOUNT DUE AND OWING	No. of Violations	PENAL-TIES 1775	No. of Violations	PENAL-TIES 1813	TOTAL TRAINING FUND	Amount Due and Owning			
	-Thu	-Wed	-Tue																-Mon	-Sun	-Sat
PERIOD																					
ENDING YEAR																					
Wk end																					
	ST																		Rate		
	OT																		Rate		
	DT																		Rate		
	ST																		Rate		
	OT																		Rate		
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	ST																		Rate		
	OT																		Rate		
	DT																		Rate		

ST hours worked  
 OT hours worked  
 DT hours worked

TOTALS

Classification Code



PREVAILING WAGE DETERMINATION SUMMARY

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

WAGE DETERMINATION INFORMATION

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

**Suggested Single Project Labor Compliance Review and Enforcement Report Form**

[Appendix C following 8 CCR §16434]

Awarding Body: \_\_\_\_\_

Project Name: \_\_\_\_\_

Name of Approved Labor Compliance Program: \_\_\_\_\_

Bid Advertisement Date: \_\_\_\_\_

Acceptance Date: \_\_\_\_\_

Notice of Completion Recordation Date: \_\_\_\_\_

Summary of Labor Compliance Activities

- 1. Contract Documents Containing Prevailing Wage Requirements (Identify)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

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

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- 4. Certified Payroll Record Review

a. CPRs Received From:

<u>Contractor/Subcontractor</u>	<u>For weeks ending (“w/e”) through w/e</u>
_____	_____
_____	_____
_____	_____
_____	_____

b. Classifications identified in CPRs and applicable Prevailing Wage Determinations

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

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

a. Independent Confirmation of CPR Data

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

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

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

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

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

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

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

\* Use separate page(s) for explanation

6. Complaints Received Alleging Noncompliance with Prevailing Wage Requirements.

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

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

7. Requests for Approval of Forfeiture to Labor Commissioner

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

8. Litigation Pending Under Labor Code Section 1742

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

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

\_\_\_\_\_  
Authorized Representative for Labor Compliance Program



**ATTACHMENT D**

**REQUEST FOR APPROVAL OF FORFEITURE**

**1. AWARDING BODY / THIRD PARTY LCP:**

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

**2. PROJECT INFORMATION:**

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

**3. CONTRACTOR INFORMATION:**

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

**4. LABOR COMPLIANCE PROGRAM INVESTIGATION AND FINDINGS:**

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

[Provide narrative summaries covering the following]:

*A. Statement of Issues.*

*B. Investigative Report (detailed narrative including but not limited to how the investigation was conducted including worker declarations, reviewing certified payroll records, verification of employer payment contributions, etc.).*

*C. Audit Report (detailed explanation of how audit was completed addressing each of the issues above).*

*D. Affected contractor and subcontractor information (how affected contractor and subcontractor were informed of potential violations; summary of their response with respect to violations and penalty issues; and any other information considered in determining recommended penalties).*

*E. Recommended penalties under Labor Code Section 1775(a) and basis for recommendation, including how factors in subsection (a)(2) of Section 1775 were applied to arrive at the recommended amount(s).*

ATTACHMENTS

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


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*Send the Request and all Attachments to:*

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

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

**ATTACHMENT E**

<p><b>The California State University, Chancellor's Office Capital Planning, Design and Construction Labor Compliance Program</b> 401 Golden Shore Long Beach, CA 90802-4210 Phone: (562) 951-4112 or (562) 951-4117 Fax: : (562) 951-4921 Web Site: <a href="http://www.calstate.edu/cpdc/cm">www.calstate.edu/cpdc/cm</a></p>	
<p><b>TO:</b> Contractor Address City, ST, Zip</p>	<p><b>TO:</b> Subcontractor Address City, ST, Zip</p>
<p>Date:</p>	<p>In Reply Refer to Case No.:</p>

**Notice of Withholding of Contract Payments**

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

After an investigation concerning the payment of wages to workers employed in the execution of the contract for the above-named public works project, the undersigned Labor Compliance Program Representative for the California State University, Chancellor's Office Labor Compliance Program, has determined that the contractor and/or subcontractor identified above has committed violations of the California Labor Code. In accordance with Labor Code sections 1771.5 and 1771.6, the Chancellor's Office hereby issues this Notice of Withholding of Contract Payments.

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

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The Chancellor's Office Labor Compliance Program has determined that:

- 1) the total amount of wages due is: \$ \_\_\_\_\_
- 2) the total amount of penalties assessed under Labor Code sections 1775 and 1813 is: \$ \_\_\_\_\_
- 3) the amount of penalties assessed under Labor Code section 1776 is: \$ \_\_\_\_\_

**THE CALIFORNIA STATE UNIVERSITY, CHANCELLOR'S OFFICE  
LABOR COMPLIANCE PROGRAM**

By: \_\_\_\_\_  
Name, Chancellor's Office Labor Compliance Program Representative

## **Notice of Right to Obtain Review - Formal Hearing**

*(to accompany the Notice of Withholding of Contract Payments)*

In accordance with Labor Code sections 1742 and 1771.6, an affected contractor or subcontractor may obtain review of this Notice of Withholding of Contract Payments by transmitting a written request to the office of the Labor Compliance Program within 60 days after service of the notice. **To obtain a hearing, a written Request for Review form must be transmitted to the following address:** The California State University, Chancellor's Office, Capital Planning, Design and Construction, Labor Compliance Program, 401 Golden Shore, Long Beach, CA 90802-4210. A Request for Review shall clearly identify the Notice of Withholding of Contract Payments from which review is sought, including the date of the notice (a copy of the notice shall be included as an attachment), and shall also set forth the basis upon which the notice is being contested.

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

The Chancellor's Office Labor Compliance Program Representative shall acknowledge receipt of the Request for Review by sending the contractor and/or subcontractor a Notice of Opportunity to Review Evidence letter. Within five calendar days of the date of this notice, the contractor and/or subcontractor must transmit the Request to Review Evidence letter to the Labor Compliance Program Representative. In accordance with Labor Code section 1742, the contractor or subcontractor shall be provided an opportunity to review evidence to be utilized by the Chancellor's Office Labor Compliance Program at the hearing within 20 days of the Chancellor's Office receipt of the written Request for Review.

In accordance with Labor Code section 1742(d), a certified copy of a final order may be filed by the Labor Commissioner in the office of the clerk of the superior court in any county in which the affected contractor or subcontractor has property or has or had a place of business. The clerk, immediately upon the filing, shall enter judgment for the State against the person assessed in the amount shown on the certified order.

### **Opportunity for Settlement Meeting**

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

### **Labor Compliance Liquidated Damages**

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

**The amount of Labor Compliance Liquidated Damages available under this notice is \$\_\_\_\_\_.**

Distribution: Prime Contractor, Subcontractor, Surety(s) on Bond

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

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

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

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

Contractor or subcontractor whose payroll records are delinquent or inadequate:

\_\_\_\_\_

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

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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

\_\_\_\_\_

**See page 2 for additional information, including appeal rights**



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Labor Compliance Officer

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

**Notice of Right to Obtain Review – Expedited Hearing**

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

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

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

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

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

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

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

- (a) "Withhold" means to cease payments by the Awarding Body, or others who pay on its behalf, or agents, to the general contractor. Where the violation is by a subcontractor, the general contractor shall be notified of the nature of the violation and reference made to its rights under Labor Code Section 1729.
- (b) "Contracts." Except as otherwise provided by agreement, only contracts under a single master contract, including a Design-Build contract, or contracts entered into as stages of a single project, may be the subject of withholding.
- (c) "Delinquent payroll records" means those not submitted on the date set in the contract.
- (d) "Inadequate payroll records" are any one of the following:
- (1) A record lacking any of the information required by Labor Code Section 1776;
  - (2) A record which contains all of the required information but is not certified, or is certified by someone who is not an agent of the contractor or subcontractor;
  - (3) A record remaining uncorrected for one payroll period after the Labor Compliance Program has given the contractor or subcontractor notice of inaccuracies detected by audit or record review. However, prompt correction will stop any duty to withhold if such inaccuracies do not amount to one (1) percent of the entire Certified Weekly Payroll in dollar value and do not affect more than half the persons listed as workers employed on that Certified Weekly Payroll, as defined in Labor Code Section 1776 and section 16401 of Title 8 of the California Code of Regulations.
- (e) The withholding of contract payments when payroll records are delinquent or inadequate is required by Labor Code Section 1771.5(b)(5), and it does not require the prior approval of the Labor Commissioner. The Awarding Body shall only withhold those payments due or estimated to be due to the contractor or subcontractor whose payroll records are delinquent or inadequate, plus any additional amount that the Labor Compliance Program has reasonable cause to believe may be needed to cover a back wage and penalty assessment against the contractor or subcontractor whose payroll records are delinquent or inadequate; provided that a contractor shall be required in turn to cease all payments to a subcontractor whose payroll records are delinquent or inadequate until the Labor Compliance Program provides notice that the subcontractor has cured the delinquency or deficiency.
- (f) When contract payments are withheld under this section, the Labor Compliance Program shall provide the contractor and subcontractor, if applicable, with immediate written notice that includes all of the following: (1) a statement that payments are being withheld due to delinquent or inadequate payroll records, and that identifies what records are missing or states why records that have been submitted are deemed inadequate; (2) specifies the amount being withheld; and (3) informs the contractor or subcontractor of the right to request an expedited hearing to review the withholding of contract payments under Labor Code Section 1742, limited to the issue of whether the records are delinquent or inadequate or the Labor Compliance Program has exceeded its authority under this section.
- (g) No contract payments shall be withheld solely on the basis of delinquent or inadequate payroll records after the required records have been produced.
- (h) In addition to withholding contract payments based on delinquent or inadequate payroll records, penalties shall be assessed under Labor Code Section 1776(g) for failure to timely comply with a written request for certified payroll records. The assessment of penalties under Labor Code Section 1776(g) does require the prior approval of the Labor Commissioner under section 16436 of these regulations.

**Request for Review**

To: James Sowerbrower, Chief, Construction Management      Date: \_\_\_\_\_  
The California State University, Chancellor's Office  
Capital Planning, Design and Construction  
Labor Compliance Program  
401 Golden Shore  
Long Beach, CA 90802-4210

From: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Subject: Notice of Withholding of Contract Payments Dated: \_\_\_\_\_  
Our Case No.: \_\_\_\_\_  
Project Name, Project Number  
Campus

Dear Sir:


The undersigned hereby requests a review of the subject Notice of Withholding of Contract Payments, dated \_\_\_\_\_, which is enclosed.

We are contesting this notice based on: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

Sincerely,

Contractor  
Title

**ATTACHMENT G**

<p><b>The California State University, Chancellor's Office Capital Planning, Design and Construction Labor Compliance Program</b> 401 Golden Shore Long Beach, CA 90802-4210 Phone: (562) 951-4112 or (562) 951-4117 Fax: : (562) 951-4921 Web Site: <a href="http://www.calstate.edu/cpdc/cm">www.calstate.edu/cpdc/cm</a></p>	
<p><b>To:</b> Department of Industrial Relations Office of the Director-Legal Unit Attention: Lead Hearing Officer P. O. Box 420603 San Francisco, CA 94142-0603</p>	
Date:	In Reply Refer to Case No.:

**Notice of Transmittal**

Public Agency/Awarding Body:  
The California State University, Chancellor's Office

Project Identification:

Enclosed herewith please find a Request for Review:

dated \_\_\_\_\_,  
postmarked \_\_\_\_\_, and  
received by this office on \_\_\_\_\_.

Also enclosed please find the following:

- \_\_\_ Copy of Notice of Withholding of Contract Payments
- \_\_\_ Copy of Audit Summary


**THE CALIFORNIA STATE UNIVERSITY, CHANCELLOR'S OFFICE  
LABOR COMPLIANCE PROGRAM**

By: \_\_\_\_\_  
Name, Labor Compliance Program Representative

cc: Prime Contractor  
Subcontractor  
Bonding Company

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

## ATTACHMENT H

<p><b>The California State University, Chancellor’s Office Capital Planning, Design and Construction Labor Compliance Program</b> 401 Golden Shore Long Beach, CA 90802-4210 Phone: (562) 951-4112 or (562) 951-4117 Fax: : (562) 951-4921 Web Site: <a href="http://www.calstate.edu/cpdc/cm">www.calstate.edu/cpdc/cm</a></p>	
<p><b>TO:</b> Contractor Address City, ST, Zip</p>	<p><b>TO:</b> Subcontractor Address City, ST, Zip</p>
<p>Date:</p>	<p>In Reply Refer to Case No.:</p>

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

Please be advised that this office has received your **Request for Review**, dated \_\_\_\_\_, and pertaining to the Notice of Withholding of Contract Payments issued by the Chancellor’s Office Labor Compliance Representative in the above-referenced case.

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

CCR 17224 (Prevailing Wage Hearing Regulations) provides as follows:

- “(a) Within ten (10) days following its receipt of a Request for Review, the Enforcing Agency [Chancellor’s Office] shall also notify the affected contractor or subcontractor of its opportunity and the procedures for reviewing evidence to be utilized by the Chancellor’s Office, at the hearing of the Request for Review.
- (b) The Chancellor’s Office shall be deemed to have provided the opportunity to review evidence required by this Rule if it (1) gives the affected contractor or subcontractor the option at said party’s own expense to either (i) obtain copies of all such evidence through a commercial copying service or (ii) inspect and copy such evidence at the office of the Chancellor’s Office during normal business hours; or if (2) the Chancellor’s Office, at its own expense, forwards copies of all such evidence to the affected contractor or subcontractor.
- (c) The evidence required to be provided under this Rule shall include the identity of witnesses whose testimony the Chancellor’s Office intends to present, either in person at the hearing or by declaration or affidavit. This provision shall not be construed as requiring the Chancellor’s Office to prepare or provide any separate listing of witnesses whose identities are disclosed within the written materials made available under subpart (a).
- (d) The Chancellor’s Office shall make evidence available for review as specified in subparts (a) through (c) within 20 days of its receipt of the Request for Review; provided that, this deadline may be extended by written request or agreement of the affected contractor or subcontractor. The Chancellor’s Office failure to make evidence available for review as required by Labor Code section 1742(b) and this Rule, shall preclude the Chancellor’s Office from introducing such evidence in proceedings before the Hearing officer or the Director.
- (e) This Rule shall not preclude the Chancellor’s Office from relying upon or presenting any evidence first obtained after the initial disclosure of evidence under subparts (a) through (d), provided that, such evidence is promptly disclosed to the affected contractor or subcontractor. This Rule also shall not preclude the Chancellor’s Office from presenting previously undisclosed evidence to rebut new or collateral claims raised by another party in the proceeding.”

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

*Within five calendar days of the date of this notice, please transmit the attached Request to Review Evidence to the Chancellor's Office Labor Compliance Program at the address at the top of this page.*

**ATTACHMENT I**

**Request to Review Evidence**

To: James Sowerbrower and Barbara Nicholson,  
The California State University, Chancellor's Office  
Capital Planning, Design and Construction  
Labor Compliance Program  
401 Golden Shore  
Long Beach, CA 90802-4210

Date: \_\_\_\_\_

From: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Subject: Notice of Withholding of Contract Payments Dated: \_\_\_\_\_  
Our Case No.: \_\_\_\_\_  
Project Name, Project Number  
Campus

Dear Sir:

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

Sincerely,

Contractor  
Title

PREVAILING WAGE HEARING REGULATIONS

**CALIFORNIA CODE OF REGULATIONS**  
TITLE 8, CHAPTER 8, SUBCHAPTER 6  
(SECTIONS 17201 through 17270)

**C O N T E N T S**

**ARTICLE 1. GENERAL**

- 17201. Scope and Application of Rules.
- 17202. Definitions.
- 17203. Computation of Time and Extensions of Time to Respond or Act.
- 17204. Appointment of Hearing Officers; Delegation of Appointment Authority to Chief Counsel.
- 17205. Authority of Hearing Officers.
- 17206. Access to Hearing Records.
- 17207. Ex Parte Communications.
- 17208. Intervention and Participation by Other Interested Persons.
- 17209. Representation.
- 17210. Proper Method of Service.
- 17211. Filing and Service of Documents by Facsimile or Other Electronic Means.
- 17212. Administrative Adjudication Bill of Rights.

**ARTICLE 2. ASSESSMENT OR NOTICE AND REQUEST FOR REVIEW**

- 17220. Service and Contents of Assessment or Notice of Withholding of Contract Payments.
- 17221. Opportunity for Early Settlement.
- 17222. Filing of Request for Review.
- 17223. Transmittal of Request for Review.
- 17224. Disclosure of Evidence.
- 17225. Withdrawal of Request for Review; Reinstatement.
- 17226. Dismissal or Amendment of Assessment or Notice of Withholding of Contract Payments.
- 17227. Early Disposition of Untimely Assessment, Withholding, or Request for Review.
- 17228. Finality of Assessment or of Withholding of Contract Payments When No Timely Request for Review is Filed; Authority of Awarding Body to Disburse Withheld Funds.
- 17229. Finality of Notice of Withholding of Contract Payments; Authority of Awarding Body to Recover Additional Funds.

**ARTICLE 3. PREHEARING PROCEDURES**

- 17230. Scheduling of Hearing Date; Continuances and Tolling.
- 17231. Prehearing Conference.
- 17232. Consolidation and Severance.
- 17233. Prehearing Motions; Cut-Off Date.
- 17234. Evidence by Affidavit or Declaration.
- 17235. Subpoena and Subpoena Duces Tecum.
- 17236. Written Notice to Party in Lieu of Subpoena.
- 17237. Depositions and Other Discovery.

**ARTICLE 4. HEARINGS**

- 17240. Notice of Appointment of Hearing Officer; Objections.
- 17241. Time and Place of Hearing.
- 17242. Open Hearing; Confidential Evidence and Proceedings; and Exclusion of Witnesses.
- 17243. Conduct of Hearing.

**ARTICLE 4. HEARINGS (continued)**

- 17244. Evidence Rules; Hearsay.
- 17245. Official Notice.
- 17246. Failure to Appear; Relief from Default.
- 17247. Contempt and Sanctions.
- 17248. Interpreters.
- 17249. Hearing Record; Recording of Testimony and Other Proceedings.
- 17250. Burdens of Proof on Wages and Penalties.
- 17251. Liquidated Damages.
- 17252. Oral Argument and Briefs.
- 17253. Conclusion of Hearing; Time for Decision.

**ARTICLE 6. DECISION OF THE DIRECTOR**

- 17260. Decision.
- 17261. Reconsideration.
- 17262. Final Decision; Time for Seeking Review.
- 17263. Preparation of Record for Review.
- 17264. Request for Participation by Director in Judicial Review Proceeding.

**ARTICLE 7. TRANSITIONAL RULE**

- 17270. Applicability of these Rules to Notices Issued Between April 1, 2001 and June 30, 2001.

## **ARTICLE 1. GENERAL**

### **17201. Scope and Application of Rules.**

(a) These Rules govern proceedings for review of civil wage and penalty assessments and the withholding of contract payments under Articles 1 and 2 of Division 2, Part 7, Chapter 1 (commencing with section 1720) of the Labor Code, as well as any notice assessing penalties for noncompliance with payroll record obligations under Labor Code section 1776. The provisions of Labor Code section 1742 and these Rules apply to all such assessments and notices served on a contractor or subcontractor on or after July 1, 2001 and provide the exclusive method for an Affected Contractor or Subcontractor to obtain review of any such notice or assessment. These Rules also apply to transitional cases in which notices were served but no court action was filed under Labor Code sections 1731-1733 prior to July 1, 2001, in accordance with Section 17270 (Rule 70) below.

(b) These Rules do not govern debarment proceedings under Labor Code section 1777.1, nor proceedings to review determinations with respect to the violation of apprenticeship obligations under Labor Code sections 1777.5 and 1777.7, nor any criminal prosecution.

(c) These Rules do not preclude any remedies otherwise authorized by law to remedy violations of Division 2, Part 7, Chapter 1 of the Labor Code.

(d) For easier reference, individual sections within these prevailing wage hearing regulations are referred to as “Rules” using only their last two digits. For example, this Section 17201 may be referred to as Rule 01.

NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5, Labor Code. Reference: sections 1742, 1771.5, 1771.6(b), 1773.5, 1776, and 1777.1 – 1777.7, Labor Code; and Stats. 2000, Chapter 954, §1.

## **17202. Definitions.**

For the purpose of these Rules:

(a) "Affected Contractor or Subcontractor" means a contractor or subcontractor (as defined under Labor Code section 1722.1) to whom the Labor Commissioner has issued a civil wage and penalty assessment pursuant to Labor Code section 1741, or to whom an Awarding Body has issued a notice of the withholding of contract payments pursuant to Labor Code section 1771.6, or to whom the Labor Commissioner or the Division of Apprentice Standards has issued a notice assessing penalties for noncompliance with payroll record obligations under Labor Code section 1776;

(b) "Assessment" means a civil wage and penalty assessment issued by the Labor Commissioner or his or her designee pursuant to Labor Code section 1741, and it also includes a notice issued by either the Labor Commissioner or the Division of Apprenticeship Standards pursuant to Labor Code section 1776;

(c) "Awarding Body" means an awarding body or body awarding the contract (as defined in Labor Code section 1722) that exercises enforcement authority under Labor Code section 1726 or 1771.5;

(d) "Department" means the Department of Industrial Relations;

(e) "Director" means the Director of the Department of Industrial Relations;

(f) "Enforcing Agency" means the entity which has issued an Assessment or Notice of Withholding of Contract Payments and with which a Request for Review has been filed; *i.e.*, it refers to the Labor Commissioner when review is sought from an Assessment, the Awarding Body when review is sought from a Notice of Withholding of Contract Payments, and the

Division of Apprenticeship Standards when review is sought from a notice issued by that agency that assesses penalties under Labor Code section 1776;

(g) "Hearing Officer" means any person appointed by the Director pursuant to Labor Code section 1742(b) to conduct hearings and other proceedings under Labor Code section 1742 and these Rules;

(h) "Joint Labor-Management Committee" means a joint labor-management committee established pursuant to the federal Labor Management Cooperation Act of 1978 (section 175a of Title 29 of the United States Code).

(i) "Labor Commissioner" means the Chief of the Division of Labor Standards Enforcement and includes his or her designee who has been authorized to carry out the Labor Commissioner's functions under Chapter 1, Part 7 of Division 2 (commencing with section 1720) of the Labor Code;

(j) "Party" means an Affected Contractor or Subcontractor who has requested review of either an Assessment or a Notice of Withholding of Contract Payments, the Enforcing Agency that issued the Assessment or the Notice of Withholding of Contract Payments from which review is sought, and any other Person who has intervened under subparts (a), (b), or (c) of Rule 08 [Section 17208];

(k) "Person" means an individual, partnership, limited liability company, corporation, governmental subdivision or unit of a governmental subdivision, or public or private organization or entity of any character;

(l) "Representative" means a person authorized by a Party to represent that Party in a proceeding before a Hearing Officer or the Director, and includes the Labor Commissioner when the Labor

Commissioner has intervened to represent the Awarding Body in a review proceeding pursuant to Labor Code section 1771.6(b).

(m) “Rule” refers to a section within this subchapter 6. The Rule number corresponds to the last two digits of the full section number. (For example, Rule 08 is the same as section 17208.)

(n) “Surety” has the meaning set forth in Civil Code section 2787 and refers to the entity that issues the public works bond provided for in Civil Code sections 3247 and 3248 or any other surety bond that guarantees the payment of wages for labor.

(o) “Working Day” means any day that is not a Saturday, Sunday, or State holiday, as determined with reference to Code of Civil Procedure sections 12(a) and 12(b) and Government Code sections 6700 and 6701.

NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5, Labor Code. Reference: sections 2787, 3247, and 3248, Civil Code; sections 12a and 12b, Code of Civil Procedure; sections 6700, 6701, 11405.60 and 11405.70, Government Code; sections 1720 et seq., 1722, 1722.1, 1726, 1741, 1742, 1742(b), 1771.5, 1771.6, 1771.6(b), and 1776, Labor Code; and 29 U.S.C. §175a.

### **17203. Computation of Time and Extensions of Time to Respond or Act.**

(a) In computing the time within which a right may be exercised or an act is to be performed, the first day shall be excluded and the last day shall be included. If the last day is not a Working Day, the time shall be extended to the next Working Day.

(b) Unless otherwise indicated by proof of service, if the envelope was properly addressed, the mailing date shall be presumed to be: a postmark date imprinted on the envelope by the U.S. Postal Service if first-class postage was prepaid; or the date of delivery to a common carrier promising overnight delivery as shown on the carrier’s receipt.

(c) Where service of any notice, decision, pleading or other document is by first class mail, and

if within a given number of days after such service, a right may be exercised, or an act is to be performed, the time within which such right may be exercised or act performed is extended five days if the place of address is within the State of California, and 10 days if the place of address is outside the State of California but within the United States. However, this Rule shall not extend the time within which the Director may reconsider or modify a decision to correct an error (other than a clerical error) under Labor Code section 1742(b).

(d) Where service of any notice, pleading, or other document is made by an authorized method other than first class mailing, extensions of time to respond or act shall be calculated in the same manner as provided under section 1013 of the Code of Civil Procedure, unless a different requirement has been specified by the appointed Hearing Officer or by another provision of these Rules.

NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5, Labor Code. Reference: sections 1010 through 1013, Code of Civil Procedure; and section 1742(b), Labor Code.

**17204. Appointment of Hearing Officers; Delegation of Appointment Authority to Chief Counsel.**

(a) Upon receipt of a Request for Review of an Assessment or of a Notice of Withholding of Contract Payments, the Director, acting through the Chief Counsel (*see* subpart (d) below), shall appoint an impartial Hearing Officer to conduct the review proceeding.

(b) The appointed Hearing Officer shall be an attorney employed by the Office of the Director – Legal Unit. However, if no attorney employed by the Office of the Director – Legal Unit is available or qualified to serve in a particular matter, the appointed Hearing Officer may be any attorney or administrative law judge employed by the Department, other than an employee of the Division of Labor Standards Enforcement.

(c) Any person appointed to serve as a Hearing Officer in any matter shall possess at least the minimum qualifications for service as an administrative law judge pursuant to Government Code section 11502(b) and shall be someone who is not precluded from serving under Government Code section 11425.30.

(d) The Director's authority under Labor Code section 1742(b) to appoint an impartial Hearing Officer, is delegated in all cases to the Chief Counsel of the Office of the Director or to the Chief Counsel's designated Assistant or Acting Chief Counsel when the Chief Counsel is unavailable or disqualified from participating in a particular matter. This delegation includes all related authority under Rule 40 [Section 17240] below to appoint a different Hearing Officer to conduct all or any part of a review proceeding as well as the authority to consider and decide or to assign to another Hearing Officer for consideration and decision any motion to disqualify an appointed Hearing Officer.

NOTE: Authority cited: sections 7, 55, 59, 1742(b), and 1773.5, Labor Code. Reference: sections 11425.30 and 11502(b), Government Code; and sections 7, 55, 59, and 1742(b), Labor Code.

**17205. Authority of Hearing Officers.**

(a) In any proceeding assigned for hearing and decision under the provisions of Labor Code section 1742, the appointed Hearing Officer shall have full power, jurisdiction and authority to hold a hearing and ascertain facts for the information of the Director, to hold a prehearing conference, to issue a subpoena and subpoena duces tecum for the attendance of a Person and the production of testimony, books, documents, or other things, to compel the attendance of a Person residing anywhere in the state, to certify official acts, to regulate the course of a hearing, to grant a withdrawal, disposition or amendment, to order a continuance, to approve a stipulation

voluntarily entered into by the Parties, to administer oaths and affirmations, to rule on objections, privileges, defenses, and the receipt of relevant and material evidence, to call and examine a Party or witness and introduce into the hearing record documentary or other evidence, to request a Party at any time to state the respective position or supporting theory concerning any fact or issue in the proceeding, to extend the submittal date of any proceeding, to exercise such other and additional authority as is delegated to Hearing Officers under these Rules or by an express written delegation by the Director, and to prepare a recommended decision, including a notice of findings, findings, and an order for approval by the Director.

(b) There shall be no right of appeal to or review by the Director of any decision, order, act, or refusal to act by an appointed Hearing Officer other than through the Director's review of the record in issuing or reconsidering a written decision under Rules 60 [Section 17260] and 61 [Section 17261] below.

NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5, Labor Code. Reference: section 11512, Government Code and section 1742(b), Labor Code.

**17206. Access to Hearing Records.**

(a) Hearing case records shall be available for inspection and copying by the public, to the same extent and subject to the same policies and procedures governing other records maintained by the Department. Hearing case records normally will be available for review in the office of the appointed Hearing Officer; *provided however*, that a case file may be temporarily unavailable when in use by the appointed Hearing Officer or by the Director or his or her designee.

(b) Nothing in this Rule shall authorize the disclosure of any record or exhibit that is required to be kept confidential or is otherwise exempt from disclosure by law or that has been ordered to be kept confidential by an appointed Hearing Officer.

NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5, Labor Code. Reference: sections 6250 et seq. Government Code and section 1742(b), Labor Code.

**17207. Ex Parte Communications.**

(a) Except as provided in this Rule, once a Request for Review is filed, and while the proceeding is pending, there shall be no direct or indirect communication regarding any issue in the proceeding to the appointed Hearing Officer or the Director, from the Enforcing Agency or any other Party or other interested Person, without notice and the opportunity for all Parties to participate in the communication.

(b) A communication made on the record in the hearing is permissible.

(c) A communication concerning a matter of procedure or practice is presumed to be permissible, unless the topic of the communication appears to the Hearing Officer to be controversial in the context of the specific case. If so, the Hearing Officer shall so inform the other participant and may terminate the communication or continue it until after giving all Parties notice and an opportunity to participate. Any written communication concerning a matter of procedure or practice, and any written response, or a written memorandum identifying the participants and stating the substance of any such oral communication or response, shall be added to the case file so that all Parties have a reasonable opportunity to review it. Unless otherwise provided by statute or these Rules, the appointed Hearing Officer may determine a matter of procedure or practice based upon a permissible ex-parte communication. The term “matters of procedure or practice” shall be liberally construed.

(d) A communication from the Labor Commissioner to the Hearing Officer or the Director which is deemed permissible under Government Code section 11430.30 is permitted only if any such written communication and any written response, or a written memorandum identifying the participants and stating the substance of any such oral communication or response, is added to the case file so that all Parties have a reasonable opportunity to review it.

(e) If the Hearing Officer or the Director receives a communication in violation of this Rule, he or she shall comply with the requirements of Government Code section 11430.50.

(f) To the extent not inconsistent with Labor Code section 1742, the provisions of Article 7 of Chapter 4.5 of Title 2, Division 3, Part 1 (commencing with section 11430.10) of the Government Code governing ex parte communications in administrative adjudication proceedings shall apply to review proceedings conducted under these Rules.

(g) This Rule shall not be construed as prohibiting communications between the Director and the Labor Commissioner or between the Director and any other interested Person on issues or policies of general interest that coincide with issues involved in a pending review proceeding; *provided that* (1) the communication does not directly or indirectly seek to influence the outcome of any pending proceeding; (2) the communication does not directly or indirectly identify or otherwise refer to any pending proceeding; and (3) the communication does not occur at a time when the Director or the other party to the communication knows that a proceeding in which the other party to the communication is interested is under active consideration by the Director.

NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5, Labor Code. Reference: sections 11430.10 through 11430.80, Government Code, and section 1742(b), Labor Code.

### **17208. Intervention and Participation by other Interested Persons.**

(a) The Labor Commissioner may intervene as a matter of right in any review from a Notice of Withholding of Contract Payments, either as the Representative of the Awarding Body or as an interested third Party.

(b) A bonding company and any Surety on a bond that secures the payment of wages covered by the Assessment or Notice of Withholding of Contract Payments shall be permitted to intervene as a matter of right in any pending review filed by the contractor or subcontractor from the Assessment or Withholding of Contract Payments in question; *provided that*, intervention is sought at or before the first prehearing conference held pursuant to Rule 31 [Section 17231] below and within either 30 days after the bonding company or Surety was served with a copy of the Assessment or Notice of Withholding of Contract Payments or 30 days after the filing of the Request for Review, whichever is later. Thereafter, any request to intervene by such a bonding company or Surety shall be treated as a motion for permissive participation under subpart (e) of this Rule. A bonding company or Surety shall have the burden of proof with respect to any claim that it did not receive notice of the Assessment or Notice of Withholding of Contract Payments until after the filing of the Request for Review.

(c) The employee(s), labor union, or Joint Labor-Management Committee who filed the formal complaint which led the Enforcing Agency to issue the Assessment or Notice of Withholding of Contract payments shall be permitted to intervene in a pending review filed by the contractor or subcontractor from the Assessment or Withholding of Contract Payments in question; *provided that*, intervention is sought at or before the first prehearing conference held pursuant to Rule 31 [Section 17231] below and there is no good cause to deny the request. Thereafter, any request to intervene by such employee(s), labor union, or Joint Labor-Management Committee shall be

treated as a motion for permissive participation as an interested Person under subpart (d) of this Rule.

(d) Any other Person may move to participate as an interested Person in a proceeding in which that Person claims a substantial interest in the issues or underlying controversy and in which that Person's participation is likely to assist and not hinder or protract the hearing and determination of the case by the Hearing Officer and the Director. Interested Persons who are permitted to participate under this Rule shall *not* be regarded as Parties to the proceeding for any purpose, but may be provided notices and the opportunity to present arguments under such terms as the Hearing Officer deems appropriate.

(e) Rights to intervene or participate as an interested party are only in accordance with this Rule. Intervention or permissive participation under this Rule shall not expand the scope of issues under review nor shall it extend any rights or interests which have been forfeited as a result of an Affected Contractor or Subcontractor's own failure to file a timely Request for Review. The Hearing Officer may impose conditions on an intervener's or other interested Person's participation in the proceeding, including but not limited to those conditions specified in Government Code §11440.50(c).

(f) No Person shall be required to seek intervention in a review proceeding as a condition for pursuing any other remedy available to that Person for the enforcement of the prevailing wage requirements of Division 2, Part 7, Chapter 1 (starting with section 1720) of the Labor Code.

NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5, Labor Code. Reference: section 11440.50(c), Government Code; and sections 1720 et seq., 1741, 1742, and 1771.6, Labor Code.

### **17209. Representation at Hearing.**

(a) A Party may appear in person or through an authorized Representative, who need not be an attorney at law; *however*, a Party shall use the form Authorization for Representation by Non-Attorney [8 CCR 17209(b) (New 1/15/02)] to authorize representation by any non-attorney who is not an owner, officer, or managing agent of that Party.

(b) Upon formal notification that a Party is being represented by a particular individual or firm, service of subsequent notices in the matter shall be made on the Representative, either in addition to or instead of the Party, unless and until such authorization is terminated or withdrawn by further written notice. Service upon an authorized Representative shall be effective for all purposes and shall control the determination of any notice period or the running of any time limit for the performance of any acts, regardless of whether or when such notice may also have been served directly on the represented Party.

(c) An authorized Representative shall be deemed to control all matters respecting the interests of the represented Party in the proceedings.

(d) Parties and their Representatives shall have a continuing duty to keep the appointed Hearing Officer and all other Parties to the proceeding informed of their current address and telephone number.

NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5, Labor Code. Reference: section 1742(b), Labor Code.

**17210. Proper Method of Service.**

(a) Unless a particular method of service is specifically prescribed by statute or these Rules, service may be made by: (1) personal delivery; (2) priority or first class mailing postage prepaid through the U. S. Postal Service; (3) any other means authorized under Code of Civil Procedure section 1013; or (4) if authorized by the Hearing Officer pursuant to Rule 11 [Section 17211] below, by facsimile or other electronic means.

(b) Service is complete at the time of personal delivery or mailing, or at the time of transmission as determined under Rule 11 [Section 17211] below.

(c) Proof of service shall be filed with the document and may be made by: (1) affidavit or declaration of service; (2) written statement endorsed upon the document served and signed by the party making the statement; or (3) copy of letter of transmittal.

(d) Service on a Party who has appeared through an attorney or other Representative shall be made upon such attorney or Representative.

(e) In each proceeding, the Hearing Officer shall maintain an official address record which shall contain the names and addresses of all Parties and their Representatives, agents, or attorneys of record. Any change or substitution in such information must be communicated promptly in writing to the Hearing Officer. The official address record may also include the names and addresses of interested Persons who have been permitted to participate under Rule 08(d) [Section 17208].

NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5, Labor Code. Reference: section 1013, Code of Civil Procedure and section 1742(b), Labor Code.

**17211. Filing and Service of Documents by Facsimile or Other Electronic Means.**

(a) In individual cases the Hearing Officer may authorize the filing and service of documents by facsimile or by other electronic means, subject to reasonable restrictions on the time of transmission and the page length of any document or group of documents that may be transmitted by facsimile or other electronic means, and subject to any further requirements on the use of cover sheets or the subsequent filing and service of originals or hard copies of documents as the Hearing Officer deems appropriate. Filing and service by facsimile or other electronic

means shall not be authorized under terms that substantially disadvantage any Party appearing or participating in the proceeding as a matter of right. A document transmitted by facsimile or other electronic means shall not be considered received until the next Working Day following transmission unless it is transmitted on a Working Day and the entire transmission is completed by no later than 4:00 p.m. Pacific Time.

(b) Filings and service by facsimile or other electronic means shall not be authorized or accepted as a substitute for another method of service that is required by statute or these Rules, unless the Party served has expressly waived its right to be served in the required manner.

NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5, Labor Code. Reference: section 1742(b), Labor Code.

**17212. Administrative Adjudication Bill of Rights.**

(a) The provisions of the Administrative Adjudication Bill of Rights found in Article 6 of Chapter 4.5 of Title 2, Division 3, Part 1 (commencing with section 11425.10) of the Government Code shall apply to these review proceedings to the extent not inconsistent with a state or federal statute, a federal regulation, or a court decision which applies specifically to the Department. The enumeration of certain rights in these Rules may expand but shall not be construed as limiting the same or similar provision of the Administrative Adjudication Bill of Rights; nor shall the enumeration of certain rights in these Rules be construed as negating other statutory rights not stated.

(b) Ex parte communications shall be permitted between the appointed Hearing Officer and the Director in accordance with Government Code section 11430.80(b).

(c) The presentation or submission of any written communication by a Party or other interested Person during the course of a review proceeding shall be governed by the requirements of Government Code §11440.60 (b) and (c).

(d) Unless otherwise indicated by express reference within the body of one of these Rules, the provisions of Chapter 5 of Title 2, Division 3, Part 1 (commencing with section 11500) of the Government Code shall *not* apply to these review proceedings.

NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5, Labor Code. Reference: sections 11415.20, 11425.10 et seq., and 11430.80(b), Government Code; and section 1742(b), Labor Code.

## **ARTICLE 2. ASSESSMENT OR NOTICE AND REQUEST FOR REVIEW**

### **17220. Service and Contents of Assessment or Notice of Withholding of Contract Payments.**

(a) An Assessment, a Notice of Withholding of Contract Payments, or a notice assessing penalties under Labor Code section 1776 shall be served on the contractor and subcontractor, if applicable, by first class and certified mail pursuant to the requirements of Code of Civil Procedure section 1013. A copy of the notice shall also be served by certified mail on any bonding company issuing a bond that secures the payment of the wages covered by the Assessment or Notice and to any Surety on a bond, if the identities of such companies are known or reasonably ascertainable. The identity of any Surety issuing a bond for the benefit of an Awarding Body as designated obligee, shall be deemed “known or reasonably ascertainable,” and the Surety shall be deemed to have received the notice required under this subpart if sent to the address appearing on the face of the bond.

(b) An Assessment or Notice of Withholding of Contract Payments shall be in writing and shall include the following information:

(1) a description of the nature of the violation and basis for the Assessment or Notice;  
and

(2) the amount of wages, penalties, and forfeitures due, including a specification of amounts that have been or will be withheld from available contract payments, as well as all additional amounts that the Enforcing Agency has determined are due, including the amount of any liquidated damages that potentially may be awarded under Labor Code section 1742.1.

(c) An Assessment or Notice of Withholding of Contract Payments shall also include the following information:

(1) the name and address of the office to whom a Request for Review may be sent;

(2) information on the procedures for obtaining review of the Assessment or

Withholding of Contract Payments;

(3) notice of the Opportunity to Request a Settlement Meeting under Rule 21 [Section 17221] below; and

(4) the following statement which shall appear in bold or another type face that makes it stand out from the other text:

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

NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5, Labor Code. Reference: section 1013, Code of Civil Procedure, and sections 1741, 1742, 1743, 1771.6, and 1776, Labor Code.

**17221. Opportunity for Early Settlement.**

(a) The Affected Contractor or Subcontractor may, within 30 days following the service of an Assessment or Notice of Withholding of Contract Payments, request a meeting with the Enforcing Agency for the purpose of attempting to settle the dispute regarding the Assessment or Notice.

(b) Upon receipt of a timely written request for a settlement meeting, the Enforcing Agency shall afford the Affected Contractor or Subcontractor a reasonable opportunity to meet for such purpose. The settlement meeting may be held in person or by telephone and shall take place before expiration of the 60-day limit for filing a Request for Review under Rule 22 [Section 17222].

(c) Nothing herein shall preclude the Parties from meeting or attempting to settle a dispute after expiration of the time for making a request or after the filing of a Request for Review.

(d) Neither the making or pendency of a request for a settlement meeting, nor the fact that the Parties have met or have failed or refused to meet as required by this Rule shall serve to extend the time for filing a Request for Review under Rule 22 [Section 17222] below.

(e) No evidence of anything said or any admission made for the purpose of, in the course of, or pursuant to, such a settlement meeting shall be admissible or subject to discovery in any administrative or civil proceeding. No writing prepared for the purpose of, in the course of, or pursuant to, such a settlement meeting, other than a final settlement agreement, shall be admissible or subject to discovery in any administrative or civil proceeding.

NOTE: Authority cited: sections 55, 59, 1742(b) and 1773.5, Labor Code. Reference: sections 1742, 1742.1, and 1771.6, Labor Code.

**17222. Filing of Request for Review.**

(a) Any Request for Review of an Assessment or of a Notice of Withholding of Contract Wages shall be transmitted in writing to the Enforcing Agency within 60 days after service of the Assessment or Notice. Failure to request review within 60 days shall result in the Assessment or the Withholding of Contract Wages becoming final and not subject to further review under these Rules.

(b) A Request for Review shall be transmitted to the office of the Enforcing Agency designated on the Assessment or Notice of Withholding of Contract Payments from which review is sought.

(c) A Request for Review shall be deemed filed on the date of mailing, as determined by the U.S. Postal Service postmark date on the envelope or the overnight carrier's receipt in accordance with Rule 03(b) [Section 17203(b)] above, or on the date of receipt by the designated office of the Enforcing Agency, whichever is earlier.

(d) An additional courtesy copy of the Request for Review may be served on the Department by mailing to the address specified in Rule 23 [Section 17223] below at any time on or after the filing of the Request for Review with the Enforcing Agency. The service of a courtesy copy on the Department shall *not* be effective for invoking the Director's review authority under Labor Code section 1742; however, it may determine the time within which the hearing shall be commenced under Rule 41(a) [Section 17241(a)] below.

(e) A Request for Review either shall clearly identify the Assessment or Notice from which review is sought, including the date of the Assessment or Notice, or it shall include a copy of the Assessment or Notice as an attachment. A Request for Review shall also set forth the basis upon which the Assessment or Notice is being contested. A Request for Review shall be liberally construed in favor of its sufficiency; however, the Hearing Officer may require the Party seeking

review to provide a further specification of the issues or claims being contested and a specification of the basis for contesting those matters.

NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5, Labor Code. Reference: sections 1742, and 1771.6(a), Labor Code.

**17223. Transmittal of Request for Review to Department.**

Within ten (10) days following its receipt of a Request for Review, the Enforcing Agency shall transmit to the Office of the Director – Legal Unit, the Request for Review and copies of the Assessment or Notice of Withholding of Contract Wages, any Audit Summary that accompanied the Assessment or Notice, and a Proof of Service or other document showing the name and address of any bonding company or Surety entitled to notice under Rule 20(a) [Section 17220(a)] above. The Enforcing Agency shall transmit these items to the following address.

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

NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5, Labor Code. Reference: sections 1742(a) and 1771.6(a), Labor Code.

**17224. Disclosure of Evidence.**

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

(b) An Enforcing Agency shall be deemed to have provided the opportunity to review evidence required by this Rule if it (1) gives the Affected Contractor or Subcontractor the option, at the Affected Contractor or Subcontractor's own expense, to either (A) obtain copies of all such evidence through a commercial copying service or (B) inspect and copy such evidence at the office of the Enforcing Agency during normal business hours; or if (2) the Enforcing Agency at its own expense forwards copies of all such evidence to the Affected Contractor or Subcontractor.

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

(d) The Enforcing Agency shall make evidence available for review as specified in subparts (a) through (c) within 20 days of its receipt of the Request for Review; *provided that*, this deadline may be extended by written request or agreement of the Affected Contractor or Subcontractor.

The Enforcing Agency's failure to make evidence available for review as required by Labor Code section 1742(b) and this Rule, shall preclude the Enforcing Agency from introducing such evidence in proceedings before the Hearing Officer or the Director.

(e) This Rule shall not preclude the Enforcing Agency from relying upon or presenting any evidence first obtained after the initial disclosure of evidence under subparts (a) through (d), *provided that*, such evidence is promptly disclosed to the Affected Contractor or Subcontractor.

This Rule also shall not preclude the Enforcing Agency from presenting previously undisclosed evidence to rebut new or collateral claims raised by another Party in the proceeding.

NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5, Labor Code. Reference: sections 1742(b) and 1771.6, Labor Code.

**17225. Withdrawal of Request for Review; Reinstatement.**

(a) An Affected Contractor or Subcontractor may withdraw a Request for Review by written notification at any time before a decision is issued or by oral motion on the hearing record. The Hearing Officer may grant such withdrawal by letter, order or decision served on the Parties.

(b) For good cause, a Request for Review so dismissed may be reinstated by the Hearing Officer or the Director upon a showing that the withdrawal resulted from misinformation given by the Enforcing Agency or otherwise from fraud or coercion. A motion for reinstatement must be filed within 60 days of service of the letter, order or decision granting withdrawal of the Request for Review or, in the event of fraud which could not have been suspected or discovered with the exercise of reasonable diligence, within 60 days of discovery of such fraud. The motion shall be accompanied by a declaration containing a statement that any facts therein are based upon the personal knowledge of the declarant.

(c) Notwithstanding any application or showing made under subpart (b) of this Rule, neither the Hearing Officer nor the Director may reinstate any Request for Review where the underlying Assessment or Withholding of Contract Payments has become final and entered as a court judgment.

NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5, Labor Code. Reference: sections 1742 and 1771.6, Labor Code.

**17226. Dismissal or Amendment of Assessment or of Notice of Withholding of Contract Payments.**

(a) Upon motion to the appointed Hearing Officer, an Enforcing Agency may dismiss or amend an Assessment or Notice of Withholding of Contract Payments as follows:

(1) An Assessment or Notice of Withholding may be dismissed or amended to eliminate or reduce all or part of any claim for wages, damages, or penalties that has been satisfied or that is not warranted under the facts and circumstances of the case or to conform to an order of the Hearing Officer or the Director.

(2) An Assessment or Notice of Withholding may be amended to eliminate a claim for penalties as to the affected contractor upon a determination that the affected contractor is not liable for same under either Labor Code section 1775(b) [subcontractor's failure to pay prevailing rate] or Labor Code section 1776 (g) [failure to comply with request for certified payroll records].

(3) For good cause, an Assessment or Notice of Withholding of Contract Payments may be amended to revise or increase any claim for wages, damages, or penalties based upon a recomputation or the discovery of new evidence subsequent to the issuance of the original Assessment or Notice.

(b) The Hearing Officer shall grant any motion to dismiss or amend an Assessment or Notice of Withholding downward under subparts (a)(1) or (a)(2) absent a showing that such dismissal or amendment will result in the forfeiture of substantial substantive rights of another Party to the proceeding. The Hearing Officer may grant a motion to amend an Assessment or Notice of Withholding upward under subpart (a)(3) under such terms as are just, including where appropriate the extension of an additional opportunity for early settlement under Rule 21 [Section 17221]. Unless the Hearing Officer determines otherwise, an amended Assessment or

Notice of Withholding shall be deemed fully controverted without need for filing an additional or amended Request for Review.

NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5, Labor Code. Reference: sections 1742, 1771.6, 1775(b), and 1776(g), Labor Code.

**17227. Early Disposition of Untimely Assessment, Withholding, or Request for Review.**

(a) Upon the application of any Party or upon his or her own motion, the appointed Hearing Officer may issue an Order to Show Cause why an Assessment, a Withholding of Contract Payments, or a Request for Review should not be dismissed as untimely under the relevant statute.

(b) An Order to Show Cause issued under subpart (a) of this Rule shall be served on all Parties who have appeared or been served with any prior notice in the matter and shall provide the Parties with at least 10 days to respond in writing to the Order to Show Cause and an additional 5 days following the service of such responses to reply to any submission by any other Party. Evidence submitted in support or opposition to an Order to Show Cause shall be by affidavit or declaration under penalty of perjury. There shall be no oral hearing on an Order to Show Cause issued under this Rule unless requested by a Party or by the Hearing Officer.

(c) After the time for submitting responses and replies to the Order to Show Cause has passed or after the oral hearing, if any, the Hearing Officer may do one of the following: (1) recommend that the Director issue a decision setting aside the Assessment or Withholding of Contract Payments or dismissing the Request for Review as untimely under the statute; (2) find the Assessment, Withholding, or Request for Review timely and direct that the matter proceed to

hearing on the merits; or (3) reserve the timeliness issue for further consideration and determination in connection with the hearing on the merits.

(d) A decision by the Director which sets asides an Assessment or Withholding of Contract Payments or which dismisses a Request for Review as untimely shall be subject to reconsideration and to judicial review in the same manner as any other Final Order or Decision of the Director. A determination by the Hearing Officer that the Assessment, Withholding, or Request for Review was timely or that the timeliness issue should be reserved for further consideration and determination in connection with the hearing on the merits shall *not* be subject to appeal or review except as part of any reconsideration or appeal from the Decision of the Director made after the hearing on the merits.

NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5, Labor Code. Reference: sections 1741, 1742, 1771.5, and 1771.6, Labor Code.

**17228. Finality of Assessment or of Withholding of Contract Payments When No Timely Request for Review is Filed; Authority of Awarding Body to Disburse Withheld Funds.**

(a) Upon the failure of an Affected Contractor or Subcontractor to file a timely Request for Review under Labor Code section 1742(a) and Rule 22(a) [Section 17222(a)] above, the Assessment or Notice of Withholding of Contract Payments shall become a “final order” as to the Affected Contractor or Subcontractor that the Labor Commissioner may certify and file with the superior court in accordance with Labor Code section 1742(d).

(b) Where an Assessment or Notice of Withholding of Contract Payments has become final as to at least one but not as to every Affected Contractor or Subcontractor, the Awarding Body shall continue to withhold and retain the amounts required to satisfy any wages and penalties at stake

in a review proceeding initiated by any other Affected Contractor or Subcontractor until there is a final order in that proceeding that is no longer subject to judicial review.

NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5, Labor Code. Reference: sections 1727, 1742, and 1771.6, Labor Code.

**17229. Finality of Notice of Withholding of Contract Payments; Authority of Awarding Body to Recover Additional Funds.**

Where a Notice of Withholding of Contract Payments seeks to recover wages, penalties, or damages in excess of the amounts withheld from available contract payments (*see* Rule 20(b)(2) [Section 17220(b)(2)] above), an Awarding Body may recover any excess amounts that become or remain due when the Notice of Withholding of Contract Payments has become final under Labor Code section 1771.6. To recover the excess amounts, the Awarding Body shall transmit to the Labor Commissioner the Notice together with any decision of the Director or court that has become final and not subject to further review. The Labor Commissioner in turn shall certify and file the final order with the superior court in accordance with Labor Code section 1742(d).

NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5, Labor Code. Reference: sections 1742(d), and 1771.6, Labor Code.

**ARTICLE 3. PREHEARING PROCEDURES**

**17230. Scheduling of Hearing; Continuances and Tolling.**

(a) The appointed Hearing Officer shall establish the place and time of the hearing on the merits, giving due consideration to the needs of all Parties and the statutory time limits for hearing and deciding the matter. Parties are encouraged to communicate scheduling needs to the Hearing

Officer and all other Parties at the earliest opportunity. It shall not be a violation of Rule 07 [Section 17207]'s prohibition on ex parte communications for the Hearing Officer or his or her designee to communicate with Parties individually for purposes of clearing dates and times and proposing locations for the hearing. The Hearing Officer may also conduct a prehearing conference by telephone or any other expeditious means for purposes of establishing the time and place of the hearing.

(b) Once a hearing date is set, a request for a continuance that is not joined in by all other Parties or that is for more than 30 days will not be granted absent a showing of extraordinary circumstances, giving due regard to the potential prejudice to other Parties in the case and other Persons affected by the matter under review. Absent an enforceable waiver (*see* subpart (d) below), no continuance will be granted nor any proceeding otherwise delayed if doing so is likely to prevent the Hearing Officer from commencing the hearing on the matter within the statutory time limit.

(c) A request for a continuance that is for 30 days or less and is joined by all Parties shall be granted upon a showing of good cause. Notwithstanding subpart (b) above, a unilateral request for a continuance made by the Party who filed the Request for Review shall be granted upon a showing of good cause if the new date for commencing the hearing is no more than 150 days after the date of service of the Assessment or Notice of Withholding of Contract Payments.

(d) If a Party makes or joins in any request that would delay or otherwise extend the time for hearing or deciding a review proceeding beyond any prescribed time limit, such request shall also be deemed a waiver by that Party of that time limit.

(e) The time limits for hearing and deciding a review proceeding shall also be deemed tolled (1) when proceedings are suspended to seek judicial enforcement of a subpoena or other order to

compel the attendance, testimony, or production of evidence by a necessary witness; (2) when the proceedings are stayed or enjoined by any court order; (3) between the time that a proceeding is dismissed and then ordered reinstated under Rule 25 [Section 17225] above; (4) upon the order of a court reinstating or requiring rehearing of the merits of a proceeding; or (5) during the pendency of any other cause beyond the Director's direct control (including but not limited to natural disasters, temporary unavailability of a suitable hearing facility, or absence of budget authority) that prevents the Director or any appointed Hearing Officer from carrying out his or her responsibilities under these Rules.

NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5, Labor Code. Reference: section 1742(b), Labor Code.

### **17231. Prehearing Conference.**

(a) Upon the application of any Party or upon his or her own motion, the appointed Hearing Officer may conduct a prehearing conference for any purpose that may expedite or assist the preparation of the matter for hearing or the disposition of the Request for Review. The prehearing conference may be conducted by telephone or other means that is convenient to the Hearing Officer and the Parties.

(b) The Hearing Officer shall provide reasonable advance notice of any prehearing conference conducted pursuant to this Rule. The Notice shall advise the Parties of the matters which the Hearing Officer intends to cover in the prehearing conference, but the failure of the Notice to enumerate some matter shall not preclude its discussion or consideration at the conference.

(c) With or without a prehearing conference, the Hearing Officer may issue such procedural Orders as are appropriate for the submission of evidence or briefs and conduct of the hearing, consistent with the substantial rights of the affected Parties.

NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5, Labor Code. Reference: section 11511.5, Government Code, and section 1742(b), Labor Code.

**17232. Consolidation and Severance.**

(a) The Hearing Officer may consolidate for hearing and decision any number of proceedings where the facts and circumstances are similar and consolidation will result in conservation of time and expense. Where the Hearing Officer proposes to consolidate proceedings on his or her own motion, the Parties shall be given reasonable notice and an opportunity to object before consolidation is ordered.

(b) The Hearing Officer may sever consolidated proceedings for good cause.

NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5, Labor Code. Reference: section 11507.3, Government Code, and section 1742(b), Labor Code.

**17233. Prehearing Motions; Cut Off Date.**

(a) Any motion made in advance of the hearing on the merits, any opposition thereto, and any further reply shall be in writing and directed to the appointed Hearing Officer. No particular format shall be required; however, the following information shall appear prominently on the first page: (1) the case name (*i.e.*, names of the Parties); (2) any assigned case number; (3) the name of the Hearing Officer to whom the paper is being submitted; (4) the identity of the Party submitting the paper; (5) the nature of the relief sought; and (6) the scheduled date, if any, for the hearing on the merits of the Request for Review. The motion shall also include a Proof of Service, as defined in Rule 10 [Section 17210] above, showing that copies have been served on all other Parties to the proceeding.

(b) Prehearing motions shall be served and filed no later than 20 days prior to the hearing on the merits of the Request for Review. Any opposition shall be served and filed no later than 10 days after service of the motion or at least 7 days prior to the hearing on the merits, whichever is earlier. The Hearing Officer may in his or her discretion decide the motion in writing in advance of the hearing on the merits or reserve the matter for further consideration and determination at the hearing on the merits.

(c) There shall be no right to a separate oral hearing on any prehearing motion, except in those instances in which an oral hearing has been specially requested by a Party or the Hearing Officer *and* in which the enforcement or forfeiture of a fundamental right is at stake. When the Hearing Officer determines that such an oral hearing is necessary or appropriate, it may be conducted by telephone or other manner that is convenient to the Parties.

(d) With the exception of timeliness challenges under Rule 27 [Section 17227], prehearing motions which seek to dispose of a Request for Review or any related claim or defense are disfavored and ordinarily will not be considered prior to the hearing on the merits.

NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5, Labor Code. Reference: section 1742(b), Labor Code.

**17234. Evidence by Affidavit or Declaration.**

(a) At any time 20 or more days prior to commencement of a hearing, a Party may serve upon all other Parties a copy of any affidavit or declaration which the proponent proposes to introduce in evidence, together with a notice as provided in subpart (b). Unless another Party, within 10 days after service of such notice, delivers to the proponent a request to cross-examine the affiant or declarant, the right to cross-examine such affiant or declarant is waived and the affidavit or declaration, if introduced in evidence, shall be given the same effect as if the affiant or declarant

had testified in person. If an opportunity to cross-examine an affiant or declarant is not afforded after request therefor is made as herein provided, the affidavit or declaration may be introduced in evidence, but shall be given only the same effect as other hearsay evidence.

(b) The notice referred to in subpart (a) shall be substantially in the following form with the appropriate information inserted in the places enclosed by brackets:

"The accompanying affidavit or declaration of [name of affiant or declarant] will be introduced as evidence at the hearing in [title and other information identifying the proceeding]. [Name of affiant or declarant] will not be called to testify orally, and you will not be entitled to question the affiant or declarant unless you notify [name of the proponent, Representative, agent or attorney] at [address] that you wish to cross-examine the affiant or declarant. Your request must be mailed or delivered to [name of proponent, Representative, agent or attorney] on or before [specify date *at least* 10 days after anticipated date of service of this notice on the other Parties]."

(c) If a timely request is made to cross-examine an affiant or declarant under this Rule, the burden of producing that witness at the hearing shall be upon the proponent of the witness. If the proponent fails to produce the witness, the affidavit or declaration may be introduced in evidence, but shall be given only the same effect as other hearsay evidence under Rule 44 [Section 17244].

NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5, Labor Code. Reference: Rule 1613, California Rules of Court; section 11514, Government Code; and section 1742(b), Labor Code.

**17235. Subpoena and Subpoena Duces Tecum.**

(a) Subpoenas and subpoenas duces tecum may be issued for attendance at a hearing and for the production of documents at any reasonable time and place or at a hearing.

(b) Subpoenas and subpoenas duces tecum shall be issued by the Hearing Officer at the request of a Party, or by the attorney of record for a Party, in accordance with sections 1985 to 1985.6, inclusive, of the Code of Civil Procedure. The burden of serving a subpoena that has been issued by the Hearing Officer shall be upon the Party who requested the subpoena.

(c) Service of subpoenas and subpoenas duces tecum, objections thereto, and mileage and witness fees shall be governed by the provisions of Government Code sections 11450.20 through 11450.40.

(d) Subpoenas and subpoenas duces tecum shall be enforceable through the Contempt and Monetary Sanctions provision set forth in Rule 47 [Section 17247] below. A Party aggrieved by the failure or refusal of any witness to obey a subpoena or subpoena duces tecum shall have the burden of showing to the satisfaction of the Hearing Officer that the subpoena or subpoena duces tecum was properly issued and served and that the testimony or evidence sought was necessary to prove or disprove a significant claim or defense in the proceeding.

NOTE: Authority cited: 55, 59, 1742(b), and 1773.5, Labor Code. Reference: sections 1985 through 1988, Code of Civil Procedure; section 1563, Evidence Code; sections 11450.20 through 11455.30, Government Code; and section 1742(b), Labor Code.

**17236. Written Notice to Party in Lieu of Subpoena.**

(a) In the case of the production of a Party of record in the proceeding or of a Person for whose benefit a proceeding is prosecuted or defended, the service of a subpoena upon any such witness is not required if written notice requesting the witness to attend, with the time and place of the

hearing, is served on the attorney of the Party or Person. For purposes of this Rule, a Party of record in the proceeding or Person for whose benefit a proceeding is prosecuted or defended includes an officer, director, or managing agent of any such Party or Person.

(b) Service of written notice to attend under this Rule shall be made in the same manner and subject to the same conditions provided in section 1987 of the Code of Civil Procedure for service of written notice to attend in a civil action or proceeding.

(c) The Hearing Officer shall have authority under Rule 47 [Section 17247] below to sanction a Party who fails or refuses to comply with a written notice to attend that meets the requirements of this Rule and has been timely served in accordance with section 1987 of the Code of Civil Procedure. However, the Hearing Officer may not initiate contempt proceedings against the witness for failing to appear based solely on non-compliance with a written notice to attend served on the Party's attorney. A Party seeking sanctions for another Party's failure or refusal to comply with a written notice to attend shall have the burden of showing to the satisfaction of the Hearing Officer that the written notice to attend was properly issued and timely served and that the testimony or evidence sought was necessary to prove or disprove a significant claim or defense in the proceeding.

NOTE: Authority cited: 55, 59, 1742(b), and 1773.5, Labor Code. Reference: section 1987, Code of Civil Procedure; sections 11450.50 through 11455.30, Government Code; and section 1742(b), Labor Code.

### **17237. Depositions and Other Discovery.**

(a) There shall be no right to take oral depositions or obtain any other form of discovery that is not expressly authorized under these Rules.

(b) Oral depositions may be conducted only by stipulation of all Parties to the proceedings or by order of the appointed Hearing Officer upon a showing of substantial good cause. Oral

depositions will be permitted only for purposes of obtaining the testimony of witnesses who are likely to be unavailable to testify at the hearing.

(c) Nothing in this Rule shall preclude the use of deposition testimony or other evidence obtained in separate proceedings, if such evidence is otherwise relevant and admissible.

NOTE: Authority cited: 55, 59, 1742(b), and 1773.5, Labor Code. Reference: section 1987, Code of Civil Procedure; sections 11450.50 through 11455.30, Government Code; and section 1742(b), Labor Code.

#### **ARTICLE 4. HEARINGS**

##### **17240. Notice of Appointment of Hearing Officer; Objections.**

(a) Notice of the Appointment of a Hearing Officer under Rule 04 [Section 17204] above shall be provided to the Parties as soon as practicable and no later than when the matter is noticed for a prehearing conference or hearing.

(b) The Director may appoint a different Hearing Officer to conduct and hear the review or to conduct and dispose of any preliminary or procedural matter in a given case.

(c) A Party wishing to object to the appointment of a particular Hearing Officer, including for any one or more of the grounds specified in sections 11425.30 and 11425.40 of the Government Code or section 1742(b) of the Labor Code, shall within 10 days after receiving notice of the appointment and no later than the start of any hearing on the merits, *whichever is earlier*, file a motion to disqualify the appointed Hearing Officer together with a supporting affidavit or declaration. The motion shall be filed with the Chief Counsel of the Office of the Director at the address indicated in Rule 23 [Section 17223] above. Notwithstanding the foregoing time limits, if a Party subsequently discovers facts constituting grounds for the disqualification of the appointed Hearing Officer, including but not limited to that the Hearing Officer has received a

prohibited ex parte communication in the pending case, the motion shall be filed as soon as practicable after the facts constituting grounds for disqualification are discovered.

(d) Upon receipt of a motion to disqualify the appointed Hearing Officer, the Director may: (1) consider and decide the motion or appoint another Hearing Officer to consider and decide the motion, in which case the challenged Hearing Officer shall first be given an opportunity to respond to the motion, but no proceedings shall be conducted by the challenged Hearing Officer until the motion is determined; or (2) appoint another Hearing Officer to hear the Request for Review, in which case the motion shall be deemed moot.

NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5, Labor Code . Reference: sections 170.3(c)(1), Code of Civil Procedure; sections 11425.30 and 11425.40, Government Code; and section 1742(b), Labor Code.

#### **17241. Time and Place of Hearing.**

(a) A hearing on the merits of a timely Request for Review shall be commenced within 90 days after the date it is received by the Office of the Director. The hearing shall be conducted at a suitable location within the county where the appointed Hearing Officer maintains his or her regular office, unless the hearing is moved to a different county in accordance with subpart (b) below.

(b) Upon the agreement of the Parties or upon a showing of good cause by either the Party who filed the Request for Review or the Enforcing Agency, the hearing shall be conducted at a suitable location within either (1) the county where a majority of the subject public works employment was performed, or (2) any other county that is proximate to or convenient for the Parties and necessary witnesses.

(c) A suitable location under this section means one that is open and accessible to members of the public and which includes appropriate facilities for the recording of testimony. Any facility that is regularly used by any state agency or by the Awarding Body for public hearings and that will reasonably accommodate the anticipated number of Parties and witnesses involved in the proceeding, is presumed suitable in the absence of a contrary showing. Parties seeking to change the location of a hearing under subpart (b) shall make reasonable efforts to identify, agree upon, and arrange for the availability of a suitable location within a county specified in subpart (b)(1) or (b)(2).

NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5, Labor Code. Reference: section 11425.20, Government Code; and section 1742(b), Labor Code.

**17242. Open Hearing; Confidential Evidence and Proceedings; and Exclusion of Witnesses.**

(a) Subject to the qualifications set forth below, the hearing shall be open to the public. If all or part of the hearing is conducted by telephone, television, or other electronic means, the Hearing Officer shall conduct the hearing from a location where members of the public may be physically present, and members of the public shall also have a reasonable right of access to the hearing record and any transcript of the proceedings.

(b) Notwithstanding the provisions of subpart (a), the Hearing Officer may order closure of a hearing or make other protective orders to the extent necessary to: (1) preserve the confidentiality of information that is privileged, confidential, or otherwise protected by law; (2) ensure a fair hearing in the circumstances of the particular case; or (3) protect a minor witness or

a witness with a developmental disability from intimidation or other harm, taking into account the rights of all persons.

(c) Upon motion of any Party or upon his or her own motion, the Hearing Officer may exclude from the hearing room any witnesses not at the time under examination. However, a Party to the proceeding and the Party's Representative shall not be excluded.

(d) This section does not apply to any prehearing or settlement conference.

NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5, Labor Code. Reference: section 777, Evidence Code, section 11425.20, Government Code, and section 1742(b), Labor Code.

### **17243. Conduct of Hearing.**

(a) Testimony shall be taken only on oath or affirmation under penalty of perjury.

(b) Every Party shall have the right to call and examine witnesses; to introduce exhibits; to question opposing witnesses on any matter relevant to the issues even though that matter was not covered in the direct examination; to impeach any witness regardless of which Party first called the witness to testify; and to rebut any opposing evidence. A Party may be called by an opposing Party and examined as if under cross-examination, whether or not the Party called has testified or intends to testify on his or her own behalf.

(c) The Hearing Officer may call and examine any Party or witness and may on his or her own motion introduce exhibits.

(d) The Hearing Officer shall control the taking of evidence and other course of proceedings in a hearing and shall exercise that control in a manner best suited to ascertain the facts and safeguard the rights of the Parties. Prior to taking evidence, the Hearing Officer shall define the issues and

explain the order in which evidence will be presented; *provided that*, for good cause the Hearing Officer later may vary the order of presentation as circumstances warrant.

NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5, Labor Code. Reference: section 11513, Government Code; and section 1742(b), Labor Code.

**17244. Evidence Rules; Hearsay.**

- (a) The hearing need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions.
- (b) The rules of privilege shall be recognized to the same extent and applied in the same manner as in the courts of this state.
- (c) The Hearing Officer may exclude evidence if its probative value is substantially outweighed by the probability that its admission will necessitate undue consumption of time.
- (d) Hearsay evidence is admissible but shall not be sufficient in itself to support a finding unless it either would be admissible over objection in a civil action or no Party raises an objection to such use. Unless previously waived, an objection or argument that evidence is insufficient in itself to support a finding because of its hearsay character shall be timely if presented at any time before submission of the case for decision.

NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5, Labor Code. Reference: section 11513, Government Code; and section 1742(b), Labor Code.

**17245. Official Notice.**

(a) A Hearing Officer may take official notice of (1) the Director’s General Prevailing Wage Determinations, the Director’s Precedential Coverage Decisions, and wage data, studies, and reports issued by the Division of Labor Statistics and Research; (2) any other generally accepted technical fact within the fields of labor and employment that are regulated by the Director under Divisions 1, 2, and 3 of the Labor Code; and (3) any fact which either must or may be judicially noticed by the courts of this state under Evidence Code sections 451 and 452.

(b) The Parties participating in a hearing shall be informed of those matters as to which official notice is proposed to be taken and given a reasonable opportunity to show why and the extent to which official notice should or should not be taken.

(c) The Hearing Officer or the Director shall state in a decision, order, or on the record the matters as to which official notice has been taken.

NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5, Labor Code. Reference: sections 451, 452 and 455, Evidence Code; section 11515, Government Code; and section 1742(b), Labor Code.

**17246. Failure to Appear; Relief from Default.**

(a) Upon the failure of any Party to appear at a duly noticed hearing, the Hearing Officer may proceed in that Party’s absence and may recommend whatever decision is warranted by the available evidence, including any lawful inferences that can be drawn from an absence of proof by the non-appearing Party.

(b) For good cause and under such terms as are just, the appointed Hearing Officer or the Director may relieve a Party from the effects of any failure to appear and order that a review proceeding be reinstated or reheard. A Party seeking relief from non-appearance shall file a

written motion at the earliest opportunity and no later than 10 days following a proceeding of which the Party had actual notice. Such application shall be supported by an affidavit or declaration based on the personal knowledge of the declarant, and copies of the application and any supporting materials shall be served on all other Parties to the proceeding. No application shall be granted unless and until the other Parties have been afforded a reasonable opportunity to make a showing in opposition. An Order reinstating a proceeding or granting a rehearing under this section may be conditioned upon providing reimbursement to the Department and the other Parties for the costs associated with the prior non-appearance.

(c) Notwithstanding any application or showing made under subpart (b) of this Rule, neither the Hearing Officer nor the Director may reinstate any Request for Review where the underlying Assessment or Withholding of Contract Payments has become final and entered as a court judgment.

NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5, Labor Code. Reference: section 473, Code of Civil Procedure; and section 1742(b), Labor Code.

#### **17247. Contempt and Monetary Sanctions.**

(a) If any Person in proceedings before an appointed Hearing Officer disobeys or resists any lawful order or refuses, without substantial justification, to respond to a subpoena, subpoena duces tecum, or refuses to take the oath or affirmation as a witness or thereafter refuses to be examined or is guilty of misconduct during a hearing or so near the place thereof as to obstruct the proceedings, or violates the prohibition against ex parte communications under Rule 07 [Section 17207] above, the Hearing Officer may do any one or more of the following: (1) certify the facts to the Superior Court in and for the county where the proceedings are held for contempt

proceedings pursuant to Government Code section 11455.20; (2) exclude the Person from the hearing room; (3) prohibit the Person from testifying or introducing certain matters in evidence; and/or (4) establish certain facts, claims, or defenses if the Person in contempt is a Party.

(b) Either the appointed Hearing Officer by separate order or the Director in his or her decision may order a Party, the Party's authorized Representative, or both, to pay reasonable expenses, including attorney's fees, incurred by another Party as a result of bad faith actions or tactics that are frivolous or solely intended to cause unnecessary delay as defined in section 128.5 of the Code of Civil Procedure. Such order or the denial of such an order shall be subject to judicial review in the same manner as a decision of the Director on the merits. The order shall be enforceable in the same manner as a money judgment or by the contempt sanction.

NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5, Labor Code. Reference: section 128.5, Code of Civil Procedure; sections 11455.10 through 11455.30, Government Code; and section 1742(b), Labor Code.

#### **17248. Interpreters.**

(a) Proceedings shall be conducted in the English language. The notice advising a Party of the hearing date shall also include notice of the Party's right to request an interpreter for a Party or witness who cannot speak or understand English, or who can do so only with difficulty, or who is deaf or hearing impaired as defined under Evidence Code section 754.

(b) A request for an interpreter for a Party or witness shall be submitted as soon as possible after the requesting Party becomes aware of the need for an interpreter and prior to the commencement of the hearing. The request should include information that (1) will enable the Hearing Officer and Department to obtain an interpreter with appropriate skills; and (2) will

assist the Hearing Officer in determining whether the Department or the requesting Party should pay for the cost of the interpreter.

(c) Upon receipt of a timely request, the Hearing Officer shall direct the Department to provide an interpreter and shall also decide whether the Department or the requesting Party shall pay the cost of the interpreter, based upon an equitable consideration of all the circumstances, including the requesting Party's ability to pay.

(d) A person is qualified to serve as an interpreter if he or she (1) is on the current State Personnel Board List of Certified Administrative Hearing Interpreters maintained pursuant to Government Code section 11435.25; and (2) has also been examined and determined by the Department to be sufficiently knowledgeable of the terminology and procedures generally used in these proceedings.

(e) In the event that a qualified interpreter under subpart (d) is unavailable or if there are no certified interpreters for the language in which assistance is needed, the Hearing Officer may qualify and appoint another interpreter to serve as needed in a single hearing or case.

(f) Before appointment of an interpreter, the Hearing Officer or a Party may conduct a brief supplemental examination of the prospective interpreter to see if that person has the qualifications necessary to serve as an interpreter, including whether he or she understands terms and procedures generally used in these proceedings, can explain those terms and procedures in English and the other language being used, and can interpret those terms and procedures into the other language. An interpreter shall not have had any prior substantive involvement in the matter under review, and shall disclose to the Hearing Officer and the Parties any actual conflict of interest or appearance of conflict. Any condition that interferes with the objectivity of an interpreter constitutes a conflict of interest. A conflict may exist if an interpreter is an employee

of, acquainted with, or related to a Party or witness to the proceeding, or if an interpreter has an interest in the outcome of the proceeding.

(g) The Hearing Officer shall disqualify an interpreter if the interpreter cannot understand and interpret the terms and procedures used in the hearing or prehearing conference, has disclosed privileged or confidential communications, or has engaged in conduct which, in the judgment of the Hearing Officer, creates an appearance of bias, prejudice, or partiality.

(h) Nothing in this section limits any further rights extended by Evidence Code section 754 to a Party or witness who is deaf or hard of hearing.

NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5, Labor Code. Reference: section 754, Evidence Code; sections 11435.05 through 11435.65, and 68560 through 68566, Government Code; and section 1742(b), Labor Code.

#### **17249. Hearing Record; Recording of Testimony and other Proceedings.**

(a) The Hearing Officer and the Director shall maintain an official record of all proceedings conducted under these Rules. In the absence of a determination under subpart (b) below, all testimony and other proceedings at any hearing shall be recorded by audiotape. Recorded testimony or other proceedings need not be transcribed unless requested for purposes of further court review of a decision or order in the same case.

(b) Upon the application of any Party or upon his or her own motion, the Hearing Officer may authorize the use of a certified court reporter, videotape, or other appropriate means to record the testimony and other proceedings. Any application by a Party under this subpart shall be made at a prehearing conference or by prehearing motion filed no later than 10 days prior to the scheduled date of hearing. Upon the granting of any such application, it shall be the responsibility of the Party or Parties who made the application to procure and pay for the

services of a qualified person and any additional equipment needed to record the testimony and proceedings by the requested means. Ordinarily the granting of such application will be conditioned on the applicant's paying for certified copies of the transcript for the official record and for the other Parties. The failure of a requesting Party to comply with this requirement shall not be cause for delaying the hearing on the merits, but instead shall result in the proceedings being tape recorded in accordance with subpart (a).

(c) The Parties may, at their own expense, arrange for the recording of testimony and other proceedings through a different means other than the one authorized by the Hearing Officer, *provided that* it does not in any way interfere with the Hearing Officer's control and conduct of the proceedings, and *further provided that*, it shall not be regarded as an official record for any purpose absent a stipulation by all of the Parties or order of the Hearing Officer.

NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5, Labor Code. Reference: section 1742(b), Labor Code.

### **17250. Burdens of Proof on Wages and Penalties.**

(a) The Enforcing Agency has the burden of coming forward with evidence that the Affected Contractor or Subcontractor (1) was served with an Assessment or Notice of Withholding of Contract Payments in accordance with Rule 20 [Section 17220]; (2) was provided a reasonable opportunity to review evidence to be utilized at the hearing in accordance with Rule 24 [Section 17224]; and (3) that such evidence provides prima facie support for the Assessment or Withholding of Contract Payments.

(b) If the Enforcing Agency meets its initial burden under (a), the Affected Contractor or Subcontractor has the burden of proving that the basis for the Civil Wage and Penalty Assessment or for the Withholding of Contract Payments is incorrect.

(c) With respect to any civil penalty established under Labor Code section 1775, the Affected Contractor or Subcontractor shall have the burden of proving that the Labor Commissioner abused his or her discretion in determining that a penalty was due or in determining the amount of the penalty.

(d) All burdens of proof and burdens of producing evidence shall be construed in a manner consistent with relevant sections of the Evidence Code, and the quantum of proof required to establish the existence or non-existence of any fact shall be by a preponderance of the evidence, unless a higher standard is prescribed by law.

NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5, Labor Code. Reference: sections 500, 502, and 550, Evidence Code; and sections 1742(b) and 1775, Labor Code. .

#### **17251. Liquidated Damages.**

(a) With respect to any liquidated damages for which an Affected Contractor, Subcontractor, or Surety on a bond becomes liable under Labor Code section 1742.1, the Enforcing Agency shall have a further burden of coming forward with evidence to show the amount of wages that remained unpaid as of 60 days following the service of the Assessment or Notice of Withholding of Contract Payments. The Affected Contractor or Subcontractor shall have the burden of demonstrating that he or she had substantial grounds for believing the Assessment or Notice to be in error.

(b) To demonstrate “substantial grounds for believing the Assessment or Notice to be in error,” the Affected Contractor or Subcontractor must establish (1) that it had a reasonable subjective belief that the Assessment or Notice was in error; (2) that there is an objective basis in law and

fact for the claimed error; and (3) that the claimed error is one that would have substantially reduced or eliminated any duty to pay additional wages under the Assessment or Notice.

NOTE: Authority cited: 55, 59, 1742(b), and 1773.5, Labor Code. Reference: sections 1742(b), 1742.1, and 1773.5, Labor Code.

### **17252. Oral Argument and Briefs.**

(a) Parties may submit prehearing briefs of reasonable length under such conditions as the appointed Hearing Officer shall prescribe. Parties shall also be permitted to present a closing oral argument of reasonable length at or following the conclusion of the hearing.

(b) There shall be no automatic right to file a post-hearing brief. However, the Hearing Officer may permit the Parties to submit written post-hearing briefs, under such terms as are just. The Hearing Officer shall have discretion to determine, among other things, the length and format of such briefs and whether they will be filed simultaneously or on a staggered (opening, response, and reply) basis.

(c) In addition to or as an alternative to post-hearing briefs, the Hearing Officer may also prepare proposed findings or a tentative decision or may designate a Party to prepare proposed findings and thereafter give the Parties a reasonable opportunity to present arguments in support of or opposition to any proposed findings or tentative decision prior to the issuance of a decision by the Director under Rule 60 [Section 17260] below.

NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5, Labor Code. Reference: section 1742(b), Labor Code.

### **17253. Conclusion of Hearing; Time for Decision.**

(a) The hearing shall be deemed concluded and the matter submitted either upon the completion of all testimony and post-hearing arguments or upon the expiration of the last day for filing any

post-hearing brief or other authorized submission, whichever is later. Thereafter, the Director shall have 45 days within which to issue a written decision affirming, modifying, or dismissing the Assessment or the Withholding of Contract Wages.

(b) For good cause, the Hearing Officer may vacate the submission and reopen the hearing for the purpose of receiving additional evidence or argument, in which case the time for the Director to issue a written decision shall run from the date of resubmission.

NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5, Labor Code. Reference: section 1742(b), Labor Code.

## **ARTICLE 6. DECISION OF THE DIRECTOR**

### **17260. Decision.**

(a) The appointed Hearing Officer shall prepare a recommended decision for the Director's review and approval. The decision shall consist of a notice of findings, findings, and an order, and shall be in writing and include a statement of the factual and legal basis for the decision, consistent with the requirements of Labor Code section 1742 and Government Code section 11425.50.

(b) A recommended decision shall have no status or effect unless and until approved by the Director and issued in accordance with subpart (c) below.

(c) A copy of the decision shall be served by first class mail on all Parties in accordance with the requirements of Code of Civil Procedure section 1013. If a Party has appeared through an authorized Representative, service shall be made on that Party at the last known address on file with the Enforcing Agency in addition to service on the authorized Representative.

NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5, Labor Code. Reference: section 1013, Code of Civil Procedure; section 11425.50, Government Code; and section 1742(b), Labor Code. .

**17261. Reconsideration.**

- (a) Upon the application of any Party or upon his or her own motion, the Director may reconsider or modify a decision issued under Rule 60 [Section 17260] above for the purpose of correcting any error therein.
- (b) The decision must be reconsidered or modified within 15 days after its date of issuance pursuant to Rule 60(c) [Section 17260(c)]. Thereafter, the decision may not be reconsidered or modified, except that a clerical error may be corrected at any time.
- (c) The modified or reconsidered decision shall be served on the Parties in the same manner as a decision issued under Rule 60 [Section 17260].
- (d) A Party is not required to apply for reconsideration before seeking judicial review of a decision of the Director. An application for reconsideration made by any Party shall *not* extend the time for seeking judicial review pursuant to Labor Code section 1742(c) unless the Director issues a modified or reconsidered decision within the 15-day time limit prescribed in subpart (b) of this section.

NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5, Labor Code. Reference: section 1742, Labor Code.

**17262. Final Decision; Time for Seeking Review.**

- (a) The decision of the Director issued pursuant to Section Rule 60 [Section 17260] above shall be the final decision of the Director from which any Party may seek judicial review pursuant to the provisions of Labor Code section 1742(c) and Code of Civil Procedure section 1094.5; *provided however*, that if the Director has issued a modified decision pursuant to and within the 15-day limit of the Director's reconsideration authority under Section Rule 61 [Section 17261] above and Labor Code section 1742(b), the right of review and time for seeking such review

shall extend from the date of service of the modified decision rather than from the original decision.

(b) The modification of a decision to correct a clerical error after expiration of the 15-day time limit on the Director's reconsideration authority shall *not* extend the time for seeking judicial review.

(c) The time for seeking judicial review shall be determined from the date of service of the decision of the Director under Code of Civil Procedure section 1013, including any applicable extension of time provided in that statute.

(d) Any petition seeking judicial review of a decision under these Rules may be served (1) upon the Director by serving the Office of the Director – Legal Unit where the appointed Hearing Officer who conducted the hearing on the merits regularly maintains his or her office; and (2) upon the Labor Commissioner (in cases in which the Labor Commissioner was the Enforcing Agency) by the serving the regular office of the attorney who represented the Labor Commission at the hearing on the merits. The intent of this subpart is to authorize and designate a preferred method for giving the Director and the Labor Commissioner formal notice of a court action seeking review of a decision of the Director under these Rules; it does not preclude the use any other service method authorized by law.

NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5. Reference: sections 1013 and 1094.5, Code of Civil Procedure; and section 1742, Labor Code.

### **17263. Preparation of Record for Review.**

(a) Upon notice that a Party intends to seek judicial review of a decision of the Director and the payment of any required deposit, the Department, under the direction of the appointed Hearing

Officer, shall immediately prepare a hearing record consisting of all exhibits and other papers and a transcript of all testimony which the Party has designated for the inclusion in the record on review.

(b) The Party who has requested the record or any part thereof shall bear the cost of its preparation, including but not necessarily limited to any court reporter transcription fees and reasonable charges for the copying, binding, certification, and mailing of documents. Absent good cause, no record will be released to a Party or filed with a court until adequate funds to cover the cost of preparing the record have been paid by the requesting Party to the Department or to any third party designated to prepare the record. However, upon notice that a Party seeking judicial review has been granted *in forma pauperis* status under California Rule of Court 985, the Department shall bear the cost of preparing and filing the record where necessary for a proper review of the proceedings.

(c) The pendency of any request for the Department to prepare a hearing record shall *not* extend the time limits for filing a petition for review under Labor Code section 1742(c) and Code of Civil Procedure section 1094.5.

NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5, Labor Code. Reference: section 1094.5, Code of Civil Procedure; California Rule of Court 985; section 68511.3, Government Code; and section 1742(c), Labor Code.

#### **17264. Request for Participation by Director in Judicial Review Proceeding.**

Although the Director should be named as the Respondent in any action seeking judicial review of a final decision, the Director ordinarily will rely upon the Parties to the hearing (as Petitioner and Real Party in Interest) to litigate the correctness of the final decision in the writ proceeding and on any appeal. The Director may participate actively in proceedings raising issues that

specifically concern the Director's authority under the statutes and regulations governing the payment of prevailing wages on public work contracts, or the validity of related laws, regulations, or the Director's decisions as to public works coverage or generally applicable prevailing wage rates. Any Party may request the Director to file a response in the action by including a separate written request with any court pleading being served on the Director in accordance with Rule 62(d) [Section 17262(d)]. Any such separate written request should specify briefly what issues are raised by the petition that extend beyond the facts of the case and warrant the Director's participation.

NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5, Labor Code. Reference: section 1094.5, Code of Civil Procedure and section 1742(c), Labor Code.

## **ARTICLE 7. TRANSITIONAL RULE.**

### **17270. Applicability of these Rules to Notices Issued Between April 1, 2001 and June 30, 2001.**

(a) These Rules shall apply to any notice issued by the Labor Commissioner or an Awarding Body with respect to the withholding or forfeiture of contract payments for unpaid wages or penalties under the prevailing wage laws in effect prior to July 1, 2001; *provided that*, the party seeking review has not commenced a civil action with respect to such notice under the provisions of Labor Code sections 1731-1733 [repealed effective July 1, 2001].

(b) An Affected Contractor or Subcontractor may appeal any such notice served between April 1, 2001 and June 30, 2001 by filing a Request for Review with the Enforcing Agency that issued the notice, in the manner and form specified in Rule 22 [Section 17222] above. Any such

Request for Review shall be in writing and shall include a statement indicating the date upon which the contractor or subcontractor was served with the notice of withholding or forfeiture.

(c) This Rule shall *not* extend the time available to appeal the notice under the former law. A Request for Review of a notice issued prior to July 1, 2001 must be filed with the Enforcing Agency within ninety (90) days after service of the notice.

(d) A contractor or subcontractor who has sought review of a notice issued prior to July 1, 2001 by filing a court action under the repealed provisions of Labor Code sections 1731-1733 on or after July 1, 2001, shall, if said action would have been timely under those sections, be afforded the opportunity to dismiss the action without prejudice, after entering into a stipulation that the proceeding be transferred to the Director for hearing in accordance with these Rules. The stipulation shall also provide that the time for commencing a hearing under Rule 41 [Section 17241] shall not begin to run until the case has been formally transferred to and received by the Office of the Director.

(e) Any hearing request made pursuant to Labor Code section 1771.7 [repealed effective July 1, 2001] that has not been heard and decided by a Hearing Officer prior to July 1, 2001 shall be handled in accordance with these Rules.

NOTE: Authority cited: sections 55, 59, 1742(b), and 1773.5, Labor Code. Reference: section 1742(b), Labor Code.



AUTHORIZED REPRESENTATIVE OR PARTY WITHOUT ATTORNEY (Name, Address, and Telephone):	<i>For ODL use only:</i>
<b>STATE OF CALIFORNIA DEPARTMENT OF INDUSTRIAL RELATIONS</b>	
In the matter of the Request for Review of:  <div style="display: flex; justify-content: space-around; align-items: center;"> <div style="text-align: center;">           vs.         </div> <div style="text-align: center;">           Requesting Party,         </div> </div>  <div style="display: flex; justify-content: space-around; align-items: center;"> <div style="text-align: center;">           Enforcing Agency.         </div> </div>	
<b>AUTHORIZATION FOR REPRESENTATION BY NON-ATTORNEY (Rule 9(b))</b>	Case No.: <span style="float: right;">- PWH</span>

(Name of Party) \_\_\_\_\_ designates the following individual or firm, who is not an attorney at law,\* to serve as our authorized representative in this matter and to receive all notices in our behalf unless and until this Authorization is terminated or withdrawn by further written notice.

*Specify Name, Address, and Telephone Number of Representative:*

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Date: \_\_\_\_\_

.....  
 (TYPE OR PRINT NAME OF  OWNER,  OFFICER, OR  MANAGING AGENT WHO IS MAKING THIS DESIGNATION)

\_\_\_\_\_  
 (SIGNATURE)  
 Owner, Officer, or Managing Agent of Party

I accept this authorization.

Date: \_\_\_\_\_

\_\_\_\_\_  
 Authorized Representative

\* This form is not required for an authorized representative who is an Owner, Officer, or Managing Agent of the Party

ATTORNEY, AUTHORIZED REPRESENTATIVE, OR PARTY WITHOUT ATTORNEY (Name, Address, and Telephone):	<i>For ODL use only:</i>
STATE OF CALIFORNIA DEPARTMENT OF INDUSTRIAL RELATIONS	
In the matter of the Request for Review of:  <div style="text-align: center;">           Requesting Party,             vs.             Enforcing Agency.         </div>	
<b>SUBPOENA FOR PERSONAL APPEARANCE          AT HEARING ON MERITS (Rule 35)</b>	Case No.: _____ - PWH

**THE PEOPLE OF THE STATE OF CALIFORNIA, TO** *(name, address, and telephone number of witness, if known):*

- 1. YOU ARE ORDERED TO APPEAR AS A WITNESS in this action at the date, time, and place shown in the box below UNLESS you make an agreement with the person named in item 2:**

<b>a. Date:</b> _____	<b>Time:</b> _____
<b>b. Address (include room number):</b> _____	

- 2. IF YOU HAVE ANY QUESTIONS ABOUT THE TIME OF YOUR APPEARANCE OR TO CONFIRM IN ADVANCE THAT YOUR PRESENCE IS NEEDED, CONTACT THE FOLLOWING PERSON:**

a. Name or Subpoenaing attorney or party: \_\_\_\_\_ b. Telephone number: \_\_\_\_\_

- 3. Witness Fees: You are entitled to witness fees and mileage actually traveled both ways, as provided by law, if you request them before your scheduled appearance from the person named in item 2.**

**DISOBEDIENCE OF THIS SUBPOENA MAY BE PUNISHABLE BY MONETARY AND CONTEMPT SANCTIONS IMPOSED BY THE HEARING OFFICER AND ENFORCED BY THE SUPERIOR COURT.**

Date: \_\_\_\_\_

.....  
 (Print or Type Name and Title of Person Issuing Subpoena)

\_\_\_\_\_  
 (SIGNATURE)

ATTORNEY, AUTHORIZED REPRESENTATIVE, OR PARTY WITHOUT ATTORNEY (Name, Address, and Telephone):	<i>For ODL use only:</i>
<b>STATE OF CALIFORNIA          DEPARTMENT OF INDUSTRIAL RELATIONS</b>	
In the matter of the Request for Review of:  <div style="display: flex; justify-content: space-around; align-items: center;"> <div style="text-align: center;">           vs.         </div> <div style="text-align: center;">           Requesting Party,             Enforcing Agency.         </div> </div>	
<b>SUBPOENA DUCES TECUM          TO PRODUCE RECORDS (Rule 35)</b>	Case No.: _____ - PWH

**THE PEOPLE OF THE STATE OF CALIFORNIA, TO** *(name, address, and telephone number of witness, if known):*

**1. YOU ARE ORDERED TO APPEAR AS A WITNESS in this action at the date, time, and place shown in the box below UNLESS you make a special agreement with the person named in item 3:**

<b>a. Date:</b> _____	<b>Time:</b> _____
<b>b. Address (include room number):</b> _____	

**2. AND YOU ARE (check one only):**

- Ordered to appear in person and produce the records described in the Declaration on page two of this form. The personal attendance of the custodian or other qualified witness and the production of the original records are required by this subpoena.
- Not required to appear in person if you produce (i) the records described in the accompanying declaration and (ii) a declaration of custodian of records in compliance with Evidence Code §§1560, 1561, 1562, and 1271.

**3. IF YOU HAVE ANY QUESTIONS ABOUT THE TIME OF YOUR APPEARANCE OR TO CONFIRM IN ADVANCE THAT YOUR PRESENCE IS NEEDED, CONTACT THE FOLLOWING PERSON:**

a. Name or Subpoenaing attorney or party: \_\_\_\_\_ b. Telephone number: \_\_\_\_\_

**4. Witness Fees: You are entitled to witness fees and mileage actually traveled both ways, as provided by law, if you request them before your scheduled appearance from the person named in item 3.**

**DISOBEDIENCE OF THIS SUBPOENA MAY BE PUNISHABLE BY MONETARY AND CONTEMPT SANCTIONS IMPOSED BY THE HEARING OFFICER AND ENFORCED BY THE SUPERIOR COURT.**

Date: \_\_\_\_\_

.....  
 (Print or Type Name and Title of Person Issuing Subpoena Ducēs Tecum)

\_\_\_\_\_  
 (SIGNATURE)



# CSU.LC-01: PAYROLL REPORTING FORM

NAME OF CONTRACTOR: OR SUBCONTRACTOR:				CONTRACTOR'S LICENSE NO: SPECIALTY LICENSE NO:				ADDRESS:														
PAYROLL NO:		FOR WEEK ENDING:		SELF-INSURED CERTIFICATE NO:				PROJECT OR CONTRACT NO:														
(1) NAME, ADDRESS, AND SOCIAL SECURITY NUMBER OF EMPLOYEE	(2) NO. OF WITH- HOLDING EXEMPTIONS	(3) WORK CLASSIFICATION	(4) DAY							(5) TOTAL HOURS	(6) HOURLY RATE OF PAY	WORKERS' COMPENSATION POLICY NO:				PROJECT AND LOCATION:						
			M	T	W	TH	F	S	S			(7) GROSS AMOUNT EARNED		(8) DEDUCTIONS, CONTRIBUTIONS AND PAYMENTS						(9) NET WAGES PAID FOR WEEK		CHECK NO.
			DATE																			
			HOURS WORKED EACH DAY																			
THIS PROJECT		ALL PROJECTS		FED. TAX	FICA (SOC. SEC.)	STATE TAX	SDI	VAC/ HOLIDAY	HEALTH & WELFARE	PENSION												
				TRAIING.	FUND ADMIN	DUES	TRAV/ SUBS.	SAVINGS	OTHER*	TOTAL DE-DUCTIONS												
		S																				
		O																				
		S																				
		O																				
		S																				
		O																				
		S																				
		O																				

CSU.LC-01      S=Straight Time      \*OTHER - Any other deductions, contributions, and/or payment whether or not included or required by prevailing wage determinations must be separately listed. Use extra sheet if necessary.      CERTIFICATION **MUST** be completed. (See reverse side)

**CERTIFICATION**

*(This form is to be copied onto the back of the Payroll Reporting Form CSU.LC-01,  
and signed prior to each submission, or payrolls will not be accepted.)*

I, \_\_\_\_\_, the undersigned, am the  
(Print Name)

\_\_\_\_\_ with the authority to act for and on behalf of  
(Position in Company)

\_\_\_\_\_, certify under penalty of perjury  
(Name of Company and/or Contractor)

that the records or copies thereof submitted and consisting of the \_\_\_\_\_  
(Description, No. of Pages)

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

Date: \_\_\_\_\_ Signature: \_\_\_\_\_

## CSU.LC-02: STATEMENT OF COMPLIANCE

CONTRACTOR/SUBCONTRACTOR	CONTRACT NUMBER
FIRST DAY AND DATE OF PAY PERIOD	LAST DAY AND DATE OF PAY PERIOD

I do hereby certify under penalty of perjury:

- (1) That I pay or supervise payment to employees of the above-referenced contractor on the above-referenced contract. All persons employed on said project for the above-referenced time period have been paid their full weekly wages earned, that no rebates have been or will be made either directly or indirectly to or on behalf of said contractor from the full weekly wages earned by any person and that no deductions have been made either directly or indirectly from the full wages earned by any person other than permissible deductions.
  
- (2) That any payrolls otherwise under this control required to be submitted for the above period are correct and complete; that the wage rates for laborers or mechanics contained therein are not less than the applicable wage rates:
  - (a)  Specified in the applicable wage determination incorporated into the contract;
  - (b)  Determined by the Director of Industrial Relations for the county or counties in which the work is performed; that the classification set forth therein for each laborer or mechanic conform with the work he or she performed.
  
- (3) That any apprentices employed in the above period are duly registered in a bona fide apprenticeship program registered with a State apprenticeship agency.
  
- (4) That fringe benefits as listed in the contract:
  - (a)  Have been or will be paid to the approved plan(s), fund(s), or program(s) for the benefit of listed employee(s), except as noted below;
  - (b)  Have been paid directly to the listed employee(s), except as noted below;
  - (c)  See exceptions noted below.

EXCEPTION CRAFT	EXPLANATION

REMARKS

NAME (PLEASE PRINT)	TITLE
SIGNATURE	DATE

**ADA Notice** For individuals with sensory disabilities, this document is available in alternate formats. For information call (916) 263-2041 or TDD (916) 263-2044 or write Records and Forms Management, 1120 N Street, MS-89, Sacramento, CA 95814.

## CSU.LC-03: AUTHORIZATION TO CERTIFY

This form must be submitted for any person other than the registered Owner of the company who will be certifying (signing) the Statement of Compliance which will accompany each weekly Certified Payroll Report.

Project Bid Title: \_\_\_\_\_

CSU Campus: \_\_\_\_\_

The following person is designated as the Payroll Officer for the undersigned and is authorized to sign the Statement of Compliance which will accompany each weekly Certified Payroll Report for the above-named project. The designated Payroll Officer has read Section 1776 of the California Labor Code regarding Certified Payroll Reports and certifies all submissions as true and correct under penalty of perjury.

Section 1777 of the California Labor Code states: "...any contractor, or subcontractor, or agent or representative thereof, doing public work who neglects to comply with any provision of Section 1776 is guilty of a misdemeanor."

**PAYROLL OFFICER:** \_\_\_\_\_  
(Print or type full name of designated Payroll Officer)

\_\_\_\_\_  
(Signature of designated Payroll Officer)

(Check One)

Contractor

Subcontractor

\_\_\_\_\_  
(Company Name)

\_\_\_\_\_  
(State Contractor's License Number)

By: \_\_\_\_\_  
(Owner or Authorized Agent's signature)

\_\_\_\_\_  
(Print or type full name of Owner or Authorized Agent signing above)

\_\_\_\_\_  
(Title) (Date)

## CSU.LC-04: NON-PERFORMANCE REPORT

One copy of this form must be submitted within seven (7) days following the close of the Contractor's pay period for any pay period that the Contractor or subcontractor(s) did not employ workmen on the construction site. This report is not required prior to submission of initial payroll report. A single report will suffice for one month of consecutive non-activity. *Be certain to include Non-Performance Reports in your consecutive count when numbering Certified Payroll Records.*

Certified Payroll Number: \_\_\_\_\_

Name of Contractor/subcontractor: \_\_\_\_\_

Project Bid Title: \_\_\_\_\_

CSU Campus: \_\_\_\_\_

I do hereby state that no persons were employed on the construction of the above-stated project during the payroll period commencing the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_  
and ending on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

## CSU.LC-05: FRINGE BENEFIT STATEMENT

CONTRACTOR/SUBCONTRACTOR (PLEASE PRINT)	CONTRACT NUMBER	PROJECT NUMBER	DATE
TO: CONSTRUCTION ADMINISTRATOR/LABOR COMPLIANCE MANAGER		ADDRESS	

The following information (as shown or referenced on wage rate determinations) paid to or on behalf of employees in various crafts or classifications is used to check payrolls or applied to force account work on the above contract.

THIS FORM MUST BE COMPLETED AND SUBMITTED WITH THE FIRST CERTIFIED PAYROLL, OR WHEN THERE HAVE BEEN ANY CHANGES.

CLASSIFICATION	FRINGE BENEFIT HOURLY AMOUNT	NAME AND ADDRESS OF PLAN, FUND OR PROGRAM
Effective Date _____  _____  Subsistence and/or Travel Pay \$ _____  \$ _____	Vacation     \$ _____	_____
	Health & Welfare     \$ _____	_____
	Pension     \$ _____	_____
	Apprentice/ Training     \$ _____	_____
	Other     \$ _____	_____

CLASSIFICATION	FRINGE BENEFIT HOURLY AMOUNT	NAME AND ADDRESS OF PLAN, FUND OR PROGRAM
Effective Date _____  _____  Subsistence and/or Travel Pay \$ _____  \$ _____	Vacation     \$ _____	_____
	Health & Welfare     \$ _____	_____
	Pension     \$ _____	_____
	Apprentice/ Training     \$ _____	_____
	Other     \$ _____	_____

CLASSIFICATION	FRINGE BENEFIT HOURLY AMOUNT	NAME AND ADDRESS OF PLAN, FUND OR PROGRAM
Effective Date _____  _____  Subsistence and/or Travel Pay \$ _____  \$ _____	Vacation     \$ _____	_____
	Health & Welfare     \$ _____	_____
	Pension     \$ _____	_____
	Apprentice/ Training     \$ _____	_____
	Other     \$ _____	_____

*I certify under penalty of perjury that fringe benefits are paid to the approved Plans, Funds, or Programs as listed above.*

NAME AND TITLE (Please Print)	BUSINESS TELEPHONE NUMBER (Area Code first)
SIGNATURE	

## CSU.LC-06: AUTHORIZATION FOR PAYROLL DEDUCTION

To be completed and signed by any employee who is to have "other" deductions subtracted from his/her pay total. Examples of "other" deductions include: uniforms, 401k, loan or advance paybacks, etc. Whenever "other" deductions occur, this form is to be filled out and submitted with the Certified Payroll reflecting the deduction. Alimony, child support, and any other court-ordered deductions or garnishments must be accompanied by the supporting documentation.

Project Name: \_\_\_\_\_ Project No: \_\_\_\_\_

Campus: \_\_\_\_\_

Contractor: \_\_\_\_\_

Employee Name: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

Home Phone No: \_\_\_\_\_ Social Security Number: \_\_\_\_\_

Employee Work Classification: \_\_\_\_\_

Fringe Benefits paid directly to: (check one)  Employee OR  Fund/Plan

Hourly Base Pay Rate: \_\_\_\_\_

+ Hourly Fringe Benefit Payment: \_\_\_\_\_ (vacation=health & welfare+pension+apprentice/training+other fringe)

=Total Hourly Wage Earned: \_\_\_\_\_ per hour.

Additional deductions(s) withheld from employees pay total:

Reason for deduction: \_\_\_\_\_ Amount: \_\_\_\_\_ Week Ending: \_\_\_\_\_

Reason for deduction: \_\_\_\_\_ Amount: \_\_\_\_\_ Week Ending: \_\_\_\_\_

Reason for deduction: \_\_\_\_\_ Amount: \_\_\_\_\_ Week Ending: \_\_\_\_\_

*I hereby authorize (company name) \_\_\_\_\_ to make the above-listed deductions from my payroll check.*

Employee Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Print Name: \_\_\_\_\_

**Division of Apprenticeship Standards**

**Apprentices on Public Work Projects**

**Summary of Requirements**

Compliance with California Labor Code Section 1777.5 requires all public works contractors and subcontractors to:

**1. Submit contract award information.**

Contractors who are not already approved to train by an apprenticeship program sponsor shall provide contract award information to all of the applicable apprenticeship committees whose geographic area of operation includes the area of the public works project. **Submit contract award information** to the apprenticeship committee for each apprenticeable craft or trade in the area of the site of the public works project that has approved the contractors, who are participants in an approved apprenticeship program, to train apprentices. (Title 8, California Code of Regulations, Section 230).

The contract award information shall be in writing and may be on a Public Works Contract Award Information form (DAS 140). The information shall be provided to the applicable apprenticeship committee within ten (10) days of the date of the execution of the prime contract or subcontract, but in no event later than the first day in which the contractor has workers employed upon the public work. (Title 8, California Code of Regulations, Section 230). **The filing of a DAS 140 is not a request for dispatch of registered apprentices.**

**2. Employ registered apprentices** on the Public Works project in a ratio of no less than one (1) hour of apprentice work for every five (5) hours performed by a journeyman. (Title 8, California Code of Regulations, Section 230.1)

All contractors must request dispatch of required apprentices from an Apprenticeship Program (for each apprenticeable craft or trade) by giving the Program actual notice of at least 48 hours (excluding Saturdays, Sundays and holidays) before the date on which apprentices are required. Contractors who are not already participating in an approved program and who did not receive sufficient number of apprentices from their initial request, must request dispatch of apprentices from at least one other Apprenticeship Committee, if more than one exists in the area of the public works project. (Title 8, California Code of Regulations, Section 230.1(a))

**3. Make training fund contributions** in the amount established in the Prevailing Wage Rate publication for journeymen and apprentices. Contractors who contribute to an apprenticeship program are entitled to a full credit in the amount of those contributions. Contractors who do not contribute to an apprenticeship program must submit their contributions to the California Apprenticeship Council, P. O. Box 420603, San Francisco, CA 94142-0603. **Training fund contributions to the Council are due and payable on the 15th day of the month for work performed during the preceding month.**

Training contribution to the Council shall be paid by check and shall be accompanied by a completed **Training Fund Contributions form (CAC-2)**, or a form containing the following information (Title 8, California Code of Regulations, Section 230.2(c)):

- (1) The name, address, and telephone number of the contractor making the contribution.
- (2) The contractor's license number.
- (3) The name and address of the public agency that awarded the contract.
- (4) The jobsite location, including the county where the work was performed.
- (5) The contract or project number.
- (6) The time period covered by the enclosed contributions.
- (7) The contribution rate and total hours worked by apprenticeable occupation.
- (8) The name of the program(s) that provided apprentices, if any.
- (9) The number of apprentice hours worked, by apprenticeable occupation and by program.

See [www.dir.ca.gov](http://www.dir.ca.gov) for the complete regulations and Labor Code provisions.

## PUBLIC WORKS CONTRACT AWARD INFORMATION

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

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

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

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

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

*Check One of the Boxes Below*

1.  We are already approved to train apprentices by the \_\_\_\_\_  
Enter name of the Committee  
 Apprenticeship Committee. We will employ and train under their Standards.
  
2.  We will comply with the standards of \_\_\_\_\_  
Enter name of the Committee  
 Apprenticeship Committee for the duration of this job only.
  
3.  We will employ and train apprentices in accordance with the California Apprenticeship Council regulations including § 230.1(c) which requires that apprentices employed on public projects can only be assigned to perform work of the craft or trade to which the apprentice is registered and that the apprentices must at all times work with or under the direct supervision of journeyman/men.

*Signature* \_\_\_\_\_ *Date* \_\_\_\_\_

*Typed Name* \_\_\_\_\_

*Title* \_\_\_\_\_

## REQUEST FOR DISPATCH OF AN APPRENTICE

**Do not send this form to DAS**

You may use this form to request dispatch of an apprentice from the Apprenticeship Committee in the craft or trade in the area of the public work. Go to: <http://www.dir.ca.gov/das/PublicWorksForms.htm> for information about programs in your area and trade. You may also consult your local Division 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.

Date: \_\_\_\_\_

To Applicable Apprenticeship Committee: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_

Contractor Requesting Dispatch: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_

Person making request: \_\_\_\_\_

Number of Apprentice(s) Needed: \_\_\_\_\_ Craft or Trade: \_\_\_\_\_

Date Apprentice(s) to Report: \_\_\_\_\_ (48 hours notice required)

Name of Person to Report to: \_\_\_\_\_

Address to Report to: \_\_\_\_\_

Time to Report: \_\_\_\_\_

You may use this form, or make a verbal or written request, to ask for the dispatch of an apprentice. Please take note of the California Code of Regulations, Title 8, § 230.1 (a) which says in part: *if in response to a written request an Apprenticeship Committee does not dispatch any apprentice to a contractor who has agreed to employ and train apprentices in accordance with either the Apprenticeship Committee's Standards or these regulations within 72 hours of such request (excluding Saturdays, Sundays and holidays) the contractor shall not be considered in violation of this section as a result of failure to employ apprentices ...*

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

## **TRAINING FUND CONTRIBUTIONS**

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

### **California Apprenticeship Council**

NAME AND ADDRESS OF CONTRACTOR/SUBCONTRACTOR MAKING CONTRIBUTION	CONTRACTOR'S LICENSE NUMBER				
	CONTRACT OR PROJECT NUMBER				
	JOBSITE LOCATION (INCLUDE COUNTY) IF APPLICABLE. GIVE NAME OF SCHOOL, HOSPITAL, BUILDING, ETC.				
NAME AND ADDRESS OF PUBLIC AGENCY AWARDING CONTRACT	PERIOD COVERED BY CONTRIBUTION (FROM-TO)				
	FROM			TO	
CLASSIFICATION(S) OF WORKERS (CARPENTER, PLUMBER, ELECTRICIAN, ETC.)	COUNTY WORK PERFORMED IN	HOURS	CONTRIBUTION RATE PER HOUR	AMOUNT	
				0.00	
				0.00	
				0.00	
				0.00	
				0.00	
				0.00	
				0.00	
				0.00	
				<b>Total</b>	<b>\$0.00</b>
SIGNATURE / PLEASE TYPE OR PRINT YOUR NAME				DATE	
TITLE				AREA CODE & TELEPHONE NUMBER	



March 23, 2000

Certified Mail

John Doe  
ACME Construction Co.  
3170 Labor Street  
Vista, CA 92083-8318  
Re: (Identify Project)

***Sample Letter***  
***1st Demand for***  
***Certified Payrolls***

Dear Mr. Doe:

The contract for the above referenced construction project requires the submittal of certified payrolls and other related documents with all progress and final payment requests. The Chancellor's Office has an obligation to audit and monitor prevailing wage compliance on this project. You have failed to provide full and complete information as required or there are discrepancies in the information provided which necessitates additional documentation.

This request for documents is made pursuant to, and authorized by, California Labor Code Section 1776 (b) (2) and Section 1776 (g) and the contract requiring weekly employee payments and weekly certified payroll submittals.

Labor Code Section 1776 (b) (2) states: "A certified copy of all payroll records enumerated in subdivision (a) shall be made available for inspection or furnished upon request to a representative of the body awarding the contract, the Division of Labor Standards Enforcement and the Division of Apprenticeship Standards of the Department of Industrial Relations."

Labor Code 1776 (g) states: "The contractor shall have 10 days in which to comply subsequent to receipt of written notice requesting the records enumerated in subdivision (a). In the event that the contractor or subcontractor fails to comply within the 10-day period, he or she shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit twenty-five dollars (\$25) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated."

Please forward all documents identified on the attached page directly to the Chancellor's Office Labor Compliance Program at the address below. If you have any questions, please contact me at {INSERT PHONE NUMBER}.

Respectfully,

## Certified Payroll and Payroll Records Request Form

**Prime Contractor:**

**Project:**

This Request: { date }

The following documents need to be provided to the Chancellor's Office Labor Compliance Program Representative within ten days of the date of this notice. Failure to do so will subject the contractor/ subcontractor to penalties of up to \$25.00 per worker, for each day the information listed below has not been produced:

\_\_\_\_\_ Signed certified Payroll report or statement of Non-Performance with original signatures must be provided for either the Public Works Payroll Reporting Form (Form A-1-131) or a computer generated form containing the same information must be used.

\_\_\_\_\_ Training Fund Contributions (Form CAC 2 or equivalent) must be provided for:

\_\_\_\_\_

\_\_\_\_\_ Public Works Contract Award Information (Form DAS 140) with the name, address and phone number of the training program notified by all project contractors must be provided for OR an Agreement to Train Apprentices with a DAS approved apprenticeship program: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_ Fringe Benefits Statements must be provided for: \_\_\_\_\_

\_\_\_\_\_

**The following additional documentation is requested:** \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Contractors are responsible for submittal of their payrolls and those of their respective subcontractors as one package, which must be delivered to the Awarding Body along with any request for progress or final payment. In the event there has been no work performed during a given week, the certified payroll record shall be annotated with the words "No Work" for that week.



**LCP-AR1**

6. LC § 1771.5 enforcement activities (provide all information requested, attaching as many sheets as necessary).

A. List projects handled by LCP within the past 12 months.

Project Name	Bid Advertisement Date	Prime Contractor	Contract Amount
Total			

B. Summary of all wages and penalties assessed and/or recovered.

Project Name	Affected Contractor (who directly employed the worker)	Amount Assessed	Amount Recovered	Approval of Forfeiture Requested from Labor Commissioner?	Description of Violation
				<input type="checkbox"/> Yes <input type="checkbox"/> No	
				<input type="checkbox"/> Yes <input type="checkbox"/> No	
				<input type="checkbox"/> Yes <input type="checkbox"/> No	
				<input type="checkbox"/> Yes <input type="checkbox"/> No	
				<input type="checkbox"/> Yes <input type="checkbox"/> No	
				<input type="checkbox"/> Yes <input type="checkbox"/> No	
				<input type="checkbox"/> Yes <input type="checkbox"/> No	
				<input type="checkbox"/> Yes <input type="checkbox"/> No	
				<input type="checkbox"/> Yes <input type="checkbox"/> No	
Total					

**LCP-AR1**

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

Project Name	Amount Assessed	Amount Recovered	Explanation
Total			

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

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

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

Project Name	Contractor	Nature of Violation	ODL Case #	Current Status

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

Please check one:  Yes  No

If yes, identify affected contractor(s) or subcontractor(s) and date(s) of referral: \_\_\_\_\_

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

Please check one:  Yes  No

If yes, identify affected contractor(s) or subcontractor(s) and date(s) of referral: \_\_\_\_\_

