LOS ANGELES COUNTY
METROPOLITAN TRANSPORTATION AUTHORITY

LABOR COMPLIANCE MANUAL

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METROPOLITAN TRANSPORTATION AUTHORITY

PART O

LABOR COMPLIANCE MANUAL
SECTION 1.0 - LABOR COMPLIANCE REQUIREMENTS

1.0 GENERAL PROVISIONS

1.1 APPLICABILITY OF PUBLIC WORKS REQUIREMENTS

This contract is subject to the requirements of:

A. California Labor Code (CA LC), Public Works requirements for contracts in excess of $1,000;

and, in the case of Federally-assisted projects,

B. Federal Labor Standards Provisions found in Title 29, Code of Federal Regulations (CFR) for contracts in excess of $2,000.

1.2 CALIFORNIA PUBLIC WORKS REQUIREMENTS

The requirements of California law include, but are not limited to the following:

A. California Labor Code (CA LC), Chapter 1, "Public Works" of Part 7, "Public Works and Public Agencies," of Division 2, "Employment Regulation and Supervision," specifically §§ 1720 through 1861, and other applicable sections;

B. California Code of Regulations (CCR), specifically §§ 16000 through 16413.

All pertinent California statutes and regulations, including, but not limited to those referred to above, are incorporated herein by reference as though set forth in their entirety. Copies of selected sections of the CA LC and the CCR are provided in Appendix A and Appendix B, respectively, to this Manual.

1.3 FEDERAL PUBLIC WORKS REQUIREMENTS

The requirements of federal law include, but are not limited to, the following:

A. 29 CFR Part 1 - Procedures for Predetermination of Wage Rates;

B. 29 CFR Part 3 - Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States;

C. 29 CFR Part 5 - Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (Also Labor Standards Provisions Applicable to Subpart A - Davis Bacon and Related Acts, Provisions and Procedures);

D. The Davis-Bacon and Related Acts;

E. The Copeland Act (18 U.S.C. §874).

All pertinent Federal statutes and regulations, including, but not limited to those referred to above, are incorporated herein by reference as though set forth in their entirety. Copies of selected sections of the CFR and Federal Law are provided in Appendix C and Appendix D to this Manual.

1.4 RESPONSIBILITY TO OBTAIN CURRENT PUBLIC WORKS STATUTES

Copies of statutes and regulations included in this Manual, including any summaries thereof, are provided for convenience only. The Contractor is responsible for obtaining a current edition of the all applicable Federal Law, CFR, CA LC and CCR, and adhering to the latest edition of such statutes and regulations.

As a service to the Contractor, portions of applicable provisions are summarized, herein. These summaries, however, are provided merely as a reminder and as a guide. THIS SUMMARY DOES NOT SUPERSEDE THE FULL TEXT OF THE CALFORNIA CODE OR THE FEDERAL CODE. NEITHER DOES THIS SUMMARY SUPERSEDE THE CFR OR THE CCR.

1.5 RESPONSIBILITY OF CONTRACTOR FOR PUBLIC WORK CONTRACT

Contractor and any tier Subcontractor by entering into or performing work under this Contract agree to comply with all provisions of Federal and California law that apply to public works contracts. Public works includes construction, alteration, demolition, installation or repair work. It includes work performed during the design and preconstruction phases of construction including, but not limited to, inspection and land surveying work. Public works also includes the hauling of refuse from a public works site to an outside disposal location, and maintenance work.

A breach of any of the requirements found in this Manual, particularly at 29CFR§5.5, may be grounds for termination of the Contract, and for debarment as provided in 29CFR§5.12.

1.6 APPLICABILITY TO SUBCONTRACTING

Contractor's Responsibility For Subcontractors

A. The Contractor is responsible for compliance with the applicable provisions of the CA LC, the CCR, Federal Law, CFR, and the provisions of this Manual by their Subcontractors.

B. Clauses To Include In Subcontracts

The Contractor shall include or cause to be included in each Subcontract covering any of the work covered by this project clauses set forth in this Manual, and such other clauses as the AUTHORITY may by appropriate instructions require. Each Subcontractor is bound to include a clause requiring that Subcontractor to include such provisions in any lower tier Subcontract(s) which the Subcontractor may enter into, together with a clause requiring insertion of such a clause in any further Subcontract(s) that the lower tier Subcontractor may, in turn, make.

The contract executed between the Contractor and any tier Subcontractor for the performance of work on the public works project shall additionally include a copy of the applicable provisions of the CFR, including but not limited to, 29CFR Part 1, Part 3 and Part 5, and a copy of the applicable provisions of the CA LC including, but not limited to, §1771, §1775, §1776, §1777.5, §1813 and §1815. [CA LC §1775(b)(1) & §1777.7(d)(1)].

C. Subcontractors Subject To Approval

The Contractor shall not subcontract part of the work covered by this Contract or permit subcontracted work to be further subcontracted without the AUTHORITY'S prior written approval.

The Contractor shall insert in all construction Subcontracts of any tier the clauses set forth in this Section, and such other clauses as the AUTHORITY may by appropriate instructions require.

1.7 WORKERS' COMPENSATION CERTIFICATE

The Contractor shall secure payment of compensation for employees in accordance with CA LC §3700 and shall sign and file with the Construction Manager a certification stating [CA LC §1860 & §1861]:

> "I am aware of the provisions of §3700 of the California Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this Contract."

1.8 EMPLOYMENT OF MINORS PROHIBITED

The Contractor and any tier Subcontractor shall abide by the provisions of the CA LC regarding employment of minors.

1.9 SUMMARY OF CERTAIN CA LC GENERAL PROVISIONS

A. It is a misdemeanor to willfully fail to pay over five hundred dollars ($500) in agreed-upon health, pension, welfare, or vacation fund contributions. [CA LC §227]

B. Any person who does not hold a valid State of California Contractor's License issued pursuant to Chapter 9 (commencing with §7000) of Division 3 of the Business and Professional Code, and who employs any worker to perform services for which a license is required, shall be subject to a civil penalty in the amount of one hundred dollars ($100) per employee for each day of such employment. [CA LC §1021]

C. Contractor, upon request of the State of California Labor Commissioner, is required to withhold penalties and forfeitures from payments due from Subcontractors. [CA LC §1727(b) & §1729]

D. It is a felony to take, receive, or conspire to take or receive the wages of a workman or working Subcontractor engaged in a public works contract. [CA LC §1778]

E. It is a misdemeanor to collect fees for registering a person for public work. [CA LC §1779]

F. It is a misdemeanor to place any order for the employment of a workman on public work where filing of order for employment involves collecting any fee from the applicant. [CA LC §1780]

2.0 CONTRACTOR'S DUTY TO COOPERATE

The Contractor's duty to cooperate is a condition of this Contract. The Contractor's duty to cooperate is more fully described in subparagraphs 2.1 through 2.7, below.

2.1 MONITORING ACTIVITIES PERFORMED BY THE AUTHORITY

The Contractor and any tier Subcontractor shall cooperate fully with representatives the AUTHORITY'S Diversity and Economic Opportunity Department (DEOD) in their monitoring of compliance with the provisions of this Contract and provisions of California and Federal law that pertain to public works. The Contractor agrees that representatives of the DEOD have the right to conduct employee interviews without interference or obstruction by the Contractor or any tier Subcontractor. No employee of a Contractor or Subcontractor who is interviewed by a DEOD representative or a representative of a State of California or Federal labor compliance agency, shall be threatened, intimidated or coerced in relation to the interview or as a result of such interview with DEOD, State of California or Federal labor compliance agency representatives.

2.2 UNUSUAL WORK HOURS

The Contractor shall notify the Construction Manager and the DEOD in writing prior to performing work subject to this Contract on any Sunday, on any holiday, and on any day work is performed before 7:00 a.m. or after 5:30 p.m.

2.3 RETALIATION AGAINST EMPLOYEES

The Contractor and any tier Subcontractor agrees that no workman performing work subject to this Contract shall be discharged, disciplined, or in any other manner discriminated against by any contractor because such employee has made a complaint to this employer, has filed any governmental complaint, has instituted or caused to be instituted any proceeding, or has testified or is about to testify in any proceeding that relates to the labor standards applicable under this Contract.

2.4 CONVICT LABOR

In connection with the performance of work under this Contract, the Contractor and any tier Subcontractor agrees not to employ any person undergoing sentence of imprisonment at hard labor. This does not include convicts who are on parole or probation.

2.5 REPORTING LABOR COMPLIANCE VIOLATIONS

The Contractor shall promptly report in writing to the DEOD all violations of the labor standards governing all work subject to this Contract.

2.6 NOTIFICATION OF LABOR DISPUTES

Whenever the Contractor has knowledge that any actual or potential labor dispute may delay or threaten to delay the timely performance of this Contract, or to interfere with or delay work by other contractors, the Contractor shall immediately give written notice thereof, including all relevant information, to the Construction Manager and the DEOD.

2.7 SUBCONTRACTOR COOPERATION

The Contractor shall take such action with respect to any Subcontractor as may be directed by the Construction Manager as a means of enforcing provisions of this Manual including remedies for noncompliance.

3.0 PAYMENT OF PREVAILING WAGES

3.1 GENERAL REQUIREMENT – PAYMENT OF PREVAILING WAGES

A. The Contractor and any tier Subcontractor shall pay not less than the specified prevailing wage rate to all workmen employed in the execution of Contracts awarded by the AUTHORITY [CA LC §1774 & §1771, 29CFR§5.5].

B. Prevailing wage rates applicable to this contract have been established by the Director of Industrial Relations (DIR) [CA LC §1770] and, for Federally-assisted contracts, the U.S. Department of Labor, Wage and Hour Division (DOL-WHD) [29CFR Part 1]. A copy of the prevailing wage determination(s) applicable to this contract are available from the DEOD and are included in this contract by reference. In the case of Federally-assisted contracts, the prevailing wage rate applicable to any craft or classification used on the Project shall be the higher of the prevailing wage rates specified for that craft or classification by the DIR and DOL-WHD. Contractor and any tier Subcontractor shall comply with any revision in the DIR or DOL-WHD prevailing wage determinations applicable to this Contract at no additional cost to the AUTHORITY.

C. Every Apprentice shall be paid the prevailing wage rate of per diem wages for apprentices in the trade to which the apprentice is registered. [CA LC §1777.5(b) and 29CFR§5.5(a)(4)]

D. For Federally-assisted contracts, every Trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Bureau of Apprenticeship and Training shall be paid not less than the prevailing wage rate determined by the DOL-WHD for the craft or classification of work actually performed. [29CFR§5.5(a)(4)]

E. Any class of laborers or mechanics, including apprentices and trainees, which is not listed in the applicable prevailing wage determination and which is to be employed under the Contract, shall be classified in conformance to the applicable prevailing wage determination. [29CFR§5.5(a)(1)]. In the event Contractor is unable to find a classification in conformance with the applicable prevailing wage determination, remedies provided in the State of California and, if applicable, Federal labor code shall apply.

F. For Federally-assisted contracts, all disputes concerning the payment of prevailing wage rates or classifications shall be promptly reported to the AUTHORITY for its referral to DOT for decision or, at the option of the AUTHORITY, DOT referral to the Secretary of Labor. The decision of DOT or the Secretary of Labor, as the case may be, shall be final.

G. Contractor shall monitor the payment of the specified prevailing wage rate of per diem wages by any tier Subcontractor to the employees, by periodic review of the certified payroll records of the Subcontractor. [CA LC §1775(b)(2)]. Upon becoming aware of failure of the Subcontractor to pay prevailing wages, the Contractor shall diligently take corrective action to remedy the violation. [CA LC §1775(b)(3)]. Contractor is to receive an affidavit signed under penalty of perjury from Project Subcontractors that prevailing wage rate requirements have been satisfied prior to making final payment to Subcontractor. [CA LC §1775(b)(4)].

3.2 AUTHORIZED PAYROLL DEDUCTIONS & FRINGE BENEFITS

A. Per diem wages, as provided in CA LC §1773.1, includes but is not limited to, employer payments for health and welfare, pension, vacation, travel time, and subsistence pay authorized by CA LC § 3093, for apprenticeship or other training programs, and for similar purposes.

B. For Federally-assisted contracts, authorized payroll deductions shall be in accordance with the Copeland Act found at 29CFR§3.5 and §3.6.

3.3 POSTING OF PREVAILING WAGE DETERMINATION(S)

The Contractor shall post on each job site, in a location readily available to the workers, a copy of all applicable prevailing wage determinations. [CA LC §1773.2 and 29CFR§5.5(a)(1)].

3.4 FORFEITURE / WITHHOLDING FOR PREVAILING WAGE VIOLATION

A. If an underpayment is identified, restitution will be paid by the Contractor or Subcontractor to each affected worker. [CA LC §1775(a)(2)].

B. As required by Labor Code Section 1775, the Contractor shall forfeit to the DIR not more than fifty dollars ($50) per calendar day or portion thereof for each workman working for him or for any tier Subcontractor working under him who is paid less than the prevailing wage rate called for in this Contract. The AUTHORITY may withhold payment from the Contractor to ensure that the Contractor's obligation pay prevailing wage rates is met. [CA LC §1775].

C. For Federally-assisted contracts, the AUTHORITY may alternatively withhold or cause to be withheld from the Contractor so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices and trainees,

employed by the Contractor or any tier Subcontractor on the Project, the full amount of wages required by the Contract. In the event of failure to pay any laborer or mechanic, including any apprentice or trainee, employed or working on the site of the Work, all or part of wages required by the Contract, the AUTHORITY may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of further payment, advance or guarantee of funds until such violations have ceased. [29CFR§5.5(a)(2)].

4.0 PAYROLL REPORTS

4.1 GENERAL RECORDKEEPING REQUIREMENT

A. The Contractor and any tier Subcontractor must keep and certify on a weekly basis an accurate payroll record in accordance with CA LC §1776(a) and, for Federally-assisted contracts, 29CFR§3.3 & 29CFR§5.5(a)(3).

B. The certified payroll records shall be on the form provided herein in Exhibit E, or shall contain the same information as listed on the form. [CA LC §1776(c)]. Provided all information and certifications required by California law are included therein, the Contractor or Subcontractor may use the Department of Labor form WH-347, "Optional Payroll Form", which provides for all the necessary payroll information and certifications required by Federal law. This Department of Labor form may be purchased at nominal cost from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C., 20402. The Contractor or Subcontractor may, in the alternative, use any form approved by the California DIR or use its own payroll form provided it includes the same information and certifications.

C. The Contractor and any tier Subcontractor shall keep an accurate record showing the name of and actual hours worked each day and week, for each worker on the Project. [CA LC §1812]

D. The payroll records shall be available for inspection at the Contractor's principal office. [CA LC 1776(b)(1)-(2) and 29CF§3.4(b)]. The location of the records shall be provided to the AUTHORITY promptly, upon demand. [CA LC §1776(f)].

E. Contractor and any tier Subcontractor shall preserve their weekly payroll records for a period of not less than two (2) years [CA LC §1774(d)], or in the case of Federally-assisted contracts, for a period three years [29CFR§3.4(b)], from date of completion of the Contract.

4.2 WEEKLY SUBMISSION OF CERTIFIED PAYROLL RECORDS

A. The Contractor and any tier Subcontractor shall submit weekly, at no cost to AUTHORITY a certified copy of all payroll records to the DEOD. Payrolls shall be submitted weekly after the first week of work on the job site and submitted weekly thereafter. The payroll documents are to be submitted in accordance with CA LC §1776(d) and, in the case of Federally-assisted contracts, 29CFR§3.3 & 29CFR§5.5(a)(3). Contractors employing apprentices or trainees under an approved program shall include a notation on the first weekly certified payrolls submitted to the AUTHORITY, that their employment is pursuant to an approved program, and shall identify the program. The Labor Compliance Document Submittal Schedule attached to this Manual in Exhibit E provides the timeframe for submittal.

B. The copy of payrolls submitted to the AUTHORITY shall be certified by statement, signed in ink by the contractor's designated payroll agent (see next paragraph), attesting that the payrolls are correct and complete and that the wage rates contained therein are not less than those set by the applicable prevailing wage determination incorporated into this Contract. [CA LC §1776(b)]

C. Prior to commencing work on the job site the Contractor and any tier Subcontractor shall submit to DEOD a completed Certificate Appointing Payroll Officer form (see Appendix E) designating the person who will certify the Contractor's payroll.

D. Following a review by the DEOD for compliance with State of California and Federal labor laws, the payroll copy shall be retained by the AUTHORITY.

E. The Contractor hereby acknowledges the foregoing language as a written request for such records (including those of Project Subcontractors) and waives any right to further notice of that request. The Contractor shall be responsible for the submission of certified copies of payrolls of all Subcontractors.

F. Payroll reports pertaining to owner-operators must be submitted weekly to the DEOD (See Appendix E for form of report).

4.3 FORFEITURE FOR FAILURE TO SUBMIT REQUIRED PAYROLLS

As required by CA LC §1776 (g), the Contractor shall be subject to penalties of up to twenty-five dollars ($25) per day, per worker, for failing to comply strictly with requests by AUTHORITY for adequate payroll records. The AUTHORITY shall withhold the penalties from Contractor payments for violation of CA LC §1776.

4.4 RETENTION FOR FAILURE TO SUBMIT SATISFACTORY PAYROLLS

If, on or before the tenth (10^{th}) of the month, the Contractor has not submitted satisfactory payrolls to the DEOD for all work performed during the monthly period ending on or before the first (1^{st}) of that month, the AUTHORITY, on recommendation of the DEOD, will retain from the next monthly estimate an amount equal to ten percent (10%) of the estimated value of the work performed during the month except that such retention shall not exceed ten thousand dollars ($10,000) nor be less than one thousand dollars ($1,000).

Retention for failure to submit satisfactory payrolls shall be in addition to all other retention provided for in this Contract. The retention for failure to submit satisfactory payrolls for any monthly period will be released for the first payment scheduled to be made following the date that satisfactory payrolls for that monthly period are submitted to the DEOD.

5.0 USE OF APPRENTICES UPON PUBLIC WORKS

5.1 GENERAL REQUIREMENTS

The Contractor and any tier Subcontractor, shall comply with the requirements of the apprenticeship provisions of the CA LC, including, but not limited to, §1777.5, and in the case of Federally-assisted contracts, the provisions of 29CFR, including, but not limited to, §5.5(a)(4). The Contractor is responsible for compliance with this section for all apprenticeable occupations [CA LC §1777.5(n)].

5.2 SUMMARY OF PROVISIONS GOVERNING EMPLOYMENT OF APPRENTICES

A. Only apprentices approved by the Chief of the California Division of Apprenticeship Standards (DAS) are eligible to be employed at the apprentice wage rate on public works. [CA LC §1777.5(c)]

B. On Federally-assisted contracts, apprentices will be permitted to work at less than the predetermined rate for the work they perform when they are employed and individually registered in a bonafide apprenticeship program registered with the U.S. Department of Labor, Manpower Administration, Bureau of Apprenticeship and Training, or with a state apprenticeship agency recognized by the bureau, or if a person is employed in his first ninety (90) days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. [29CFR§5.5(a)(4)]

C. Contractor and any tier Subcontractor shall employ apprentices in the ratio set forth by labor code, or the ratio established under a recognized properly registered program that the contractor participates in, for any work under the Contract performed by workers in an apprenticeable craft or trade [CA LC §1777.5(d) and 29CFR5.5(a)(4)]. This ratio should not be less than one hour of apprentice work for every five hours of journeyman work on Project. [CA LC §1777.5(g)].

D. The Contractor and any tier Subcontractor shall submit contract award information to an applicable apprenticeship program, including estimate of journeyman hours, number of apprentices proposed to be employed, and dates of apprentice utilization. Within 60 days after concluding work, each contractor shall submit to AUTHORITY and apprenticeship program a verified statement of the journeyman and apprentice hours performed on Project. [CA LC §1777.5(e)].

E. For Federally-assisted contracts, the Contractor and any tier Subcontractor will additionally be required to furnish to the AUTHORITY or a representative of the DOL-WHD written evidence of the registration of its program and apprentices as well as the appropriate ratios and wage rates (expressed in percentages of the journeyman hourly rates), for the area of construction prior to using any apprentices on the Contract Work. [29CFR§5.5(a)(4)].

F. The Contractor and any tier Subcontractor shall contribute to the California Apprenticeship Council in accordance with that specified by the DIR in the prevailing wage determination. [CA LC §1777.5(m)(1)].

G. The Contractor shall continually monitor a Subcontractor's use of apprentices required to be employed on the public works project, including but not limited to periodic reviews of the certified payroll of Subcontractor [CA LC §1777.7(d)(2)]. Upon becoming aware of a failure of the Subcontractor to employ the required number of apprentices, the Contractor shall take corrective action such as retaining funds due Subcontractor, until failure is corrected. [CA LC §1777.7(d)(3)].

H. Prior to making final payment to the Subcontractor, the Contractor shall obtain a declaration signed under penalty of perjury from the Subcontractor that the Subcontractor has employed the required number of apprentices on the public works Project. [CA LC §1777.7(d)(4)].

I. The AUTHORITY is required to withhold penalties upon determination of non-compliance with the apprenticeship provisions of CA LC §1777.5. [CA LC §1777.7(a)(1)]

6.0 USE OF TRAINEES UPON PUBLIC WORKS

6.1 GENERAL REQUIREMENTS

A. For Federally-assisted contracts, the Contractor and any tier Subcontractor shall comply with all requirements of the trainee provisions of 29CFR, including, but not limited to, §5.5(a)(4).

B. For Federally-assisted contracts, except as provided in 29 CFR §5.15, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification, by the U.S. Department of Labor, Manpower Administration, Bureau of Apprenticeship and Training. [29CFR§5.5(a)(4)]

C. The ratio of trainees to journeymen shall not be greater than that permitted under the plan approved by the Bureau of Apprenticeship and Training.

D. The Contractor and any tier Subcontractor will be required to furnish the AUTHORITY or a representative of the DOL-WHD written evidence of the certification of his program, the registration of the trainees, and the ratio and wage rates prescribed in that program. In the event the Bureau of Apprenticeship and Training withdraws approval of a training program,

the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

7.0 WORKING HOURS / OVERTIME COMPENSATION UPON PUBLIC WORKS

7.1 GENERAL REQUIREMENT

A. Eight (8) hours shall constitute a legal day's work [CA LC §1810].

B. The Contractor and any tier Subcontractor shall not employ a workman more than eight (8) hours in a calendar day or forty (40) hours in a calendar week except upon compensation of at least one and one-half (1 ½) times the basic rate of pay for all hours worked in excess of eight (8) hours per day and forty (40) hours per week. [CA LC §1811 and §1815, and 29CFR§5.5(a)(10)(iii)(b) and §5.8]

C. The prevailing wage determination(s) deemed applicable to the Contract may require greater rates for overtime, holiday and weekend work.

7.2 FORFEITURE FOR NONCOMPLIANCE

A. The Contractor shall forfeit to the DIR not more than twenty-five dollars ($25) per day for each workman who is employed in excess of eight (8) hours per day or forty (40) hours per week without appropriate compensation paid. [CA LC §1813]. The AUTHORITY may withhold penalties and forfeitures from payments due to the Contractor for non-compliance. [CA LC §1727(a)]

B. For Federally-assisted contracts, Contractor and any tier Subcontractor shall be liable to any affected employee for work performed over forty (40) hours per week where that worker is not compensated at one and one-half (1 ½) times the basic hourly prevailing wage rate. Additionally, Contractor and Subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic employed in violation of the requirements set forth in this Section, in the sum of ten dollars ($10) for each calendar day on which such employee was required or permitted to work in excess of forty (40) hours without payment of the overtime wages required in this Section. [29CFR§5.5(a)(10)(iii)(b)(2)]

C. For Federally-assisted contracts, the AUTHORITY may withhold, from any monies payable on account of work performed by the Contractor or Subcontractor, such sums as may administratively be determined to be necessary to satisfy any liabilities of the Contractor or its Subcontractor for unpaid wages and liquidated damages as specified in this Section. [29CFR§5.5(a)(10)(iii)(b)(3)]

8.0 NON-DISCRIMINATION UPON PUBLIC WORKS

Contractor and any tier Subcontractor shall not discriminate in the employment of persons upon public works on the ground of the race, religious creed, color, national origin, ancestry, physical disability, medical condition, marital status, or sex. [CA LC §1735]

Contractor and any tier Subcontractor shall not refuse to accept otherwise qualified employees as registered apprentices on any public works, on the ground of the race, religious creed, color, national origin, ancestry, sex, or age. [CA LC §1777.6].

The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

9.0 REPORTING REQUIREMENTS – LABOR COMPLIANCE FORMS

The Contractor and any tier Subcontractor shall be required to submit Labor Compliance reports through the course of this Project. Copies of all required forms, along with the filing frequency requirements, are included in Appendix E to this Manual.

The AUTHORITY reserves the right to modify these reporting requirements as it deems appropriate.

10.0 LABOR COMPLIANCE CLOSE OUT

A. FINAL LABOR SUMMARY

The Contractor and any tier Subcontractor shall furnish to the DEOD, upon the completion of their work on the Contract, a summary of all employment activity that includes the total hours worked by tradesmen on the contract, and the total amount earned by the Contractor or Subcontractor.

B. FINAL CERTIFICATE

Upon completion of the Contract, the Contractor shall submit to the AUTHORITY and to the DEOD, with its voucher for final payment for any work performed under the Contract, a certificate concerning wages and classifications for laborers and mechanics, including apprentices and trainees employed on the project, in the following form.

The undersigned Contractor on:

_____

(Contract No._____)

hereby certifies that all laborers, mechanics, apprentices and trainees employed by it or by any Subcontractor performing work under the Contract on the Project have been paid wages at rates not less than those required by the Contract provisions, and that the work performed by each such laborer, mechanic, apprentice or trainee conformed to the classifications set forth in the Contract or training program provisions applicable to the wage rate paid.

_____

Signature and Title

11.0 CONTRACT ENFORCEMENT

11.1 LABOR COMPLIANCE MONITORING

Ultimate authority for Labor Compliance enforcement is vested in the AUTHORITY'S DEOD. Enforcement activities performed by the DEOD will be consistent with all applicable Federal and State of California requirements, including CA LC §1771.6. In addition to any other remedies the AUTHORITY may have at law or under the contract, the AUTHORITY may suspend or terminate a Contract, or, subject to a Board approved debarment process, debar a Contractor or Subcontractor, from future Contracts with the AUTHORITY, for breach of the Labor Compliance requirements set forth herein.

11.2 ENFORCEMENT POWER OF DESIGNEE

The DEOD, or its named Representative(s) will perform the following functions:

A. Conduct a pre-construction conference to present Labor Compliance requirements under the Contract.

B. Receive and process all required Labor Compliance reports from Contractor and Subcontractor(s).

C. Review and, if appropriate, audit payroll reports.

D. Request the withholding of contract payments when labor compliance violations have been identified. The withholding amounts requested will be equal to the amount of identified prevailing wage underpayment and applicable penalties. Upon notification by the DEOD of a breach of the Labor Compliance requirements set forth in this Manual, the AUTHORITY shall impose forfeitures.

E. Issue appropriate notices when Contractor or any tier Subcontractor is in violation of the requirements of this Manual.

F. Conduct Investigations in coordination with outside enforcement agencies, when appropriate.

G. Conduct any necessary hearings on Labor Compliance related complaints.

H. Request a Contractor or Subcontractor's debarment or dismissal for willful, flagrant, or repeated violations.

I. Represent the AUTHORITY as co-chairperson of the Joint Management /Labor Oversight Committee.

J. Interview employees of Contractors and Subcontractors.

11.3 WITHHOLDING PAYMENTS FOR LABOR COMPLIANCE VIOLATIONS

In the event of repeated violations by a Contractor or any tier Subcontractor, the AUTHORITY may, in addition to other remedies, take the following action:

A. On recommendation of the DEOD, the AUTHORITY shall withhold from any payment due the Contractor five hundred dollars ($500) per day, for breach by the Contractor or any Subcontractor of the following provisions of the contract's Labor Compliance requirements. This amount represents AUTHORITY damages for breach by failure to:

1. Pay general prevailing wage rates and/or fringe benefits;

2. Make payments to a health and welfare fund, pension fund, apprentice fund, vacation fund, or any other such fund for the benefit of employees;

3. Make payments to an industry promotion fund to which the employer has agreed to make payments;

4. Submit certified payroll records and related documents;

5. Pay overtime compensation;

6. Provide access to payroll records or;

7. Employ only duly licensed construction Contractors and Subcontractors.

B. The AUTHORITY shall withhold the sums set forth in paragraph A above after notice and an opportunity to be heard is afforded the Contractor, and the DEOD thereafter makes a determination that the Contractor is in violation of the Labor Compliance requirements of the Contract.

12.0 FEDERALLY-ASSISTED CONTRACT PROVISIONS & RELATED MATTERS

For Federally-assisted contracts in excess of $2,000, the following provisions of 29CFR §5.5 shall apply:

(1) Minimum wages. (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in Sec. 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the

Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) Withholding. The (write in name of Federal Agency or the loan or grant recipient) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the (Agency) may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records. (i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR **5.5**(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the (write in name of appropriate Federal agency) if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to the (write in name of agency). The payrolls submitted shall set out accurately and completely all of the information required to be maintained under Sec. **5.5**(a)(3)(i) of Regulations, 29 CFR part **5**. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

(B) Each payroll submitted shall be accompanied by a ``Statement of Compliance,'' signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be maintained under Sec. **5.5**(a)(3)(i) of Regulations, 29 CFR part **5** and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage
determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the ``Statement of Compliance'' required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the (write the name of the agency) or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and trainees--(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the (write in the name of the Federal agency) may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29
CFR 5.12.

(8) Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility. (i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

(b) Contract Work Hours and Safety Standards Act. The Agency Head shall cause or require the contracting officer to insert the following clauses set forth in paragraphs (b)(1), (2), (3), and (4) of this section in full in any contract in an amount in excess of $100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by Sec. 5.5(a) or 4.6 of part 4 of this title. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of $10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The (write in the name of the Federal agency or the loan or grant recipient) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

(c) In addition to the clauses contained in paragraph (b), in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in Sec. 5.1, the Agency Head shall cause or require the contracting officer to insert a clause requiring that

the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the Agency Head shall cause or require the contracting officer to insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the (write the name of agency) and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

13.0 INDEMNIFICATION

A. The Contractor shall indemnify, hold harmless, and defend the AUTHORITY, the General Consultant (GC), GC members, the System Engineering and Analyses Consultant, the Construction Manager (CM), their officers, employees, agents, Contractors, and Subcontractors, individually, to the maximum extent allowed by law, from and against all liability, claims, losses, actions and expenses (including attorney's fees), on account of bodily injury to or death of any person (including employees of the parties to be indemnified) or for damage to or loss of use of property (including property of the AUTHORITY) arising out of or resulting from the acts or omissions to act of the Contractor, its Subcontractors, anyone directly or indirectly employed by any of them or anyone for whose acts any of them are liable in the performance of the work, unless caused solely by the negligence of willful misconduct of or defects in design furnished by the parties to be indemnified.

B. Claims against the parties to be indemnified, by any employee of Contractor, its Subcontractors, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, shall not limit the Contractor's indemnification obligation, set forth above, in any way, by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or its Subcontractors under workers' compensation acts, disability benefit acts or other employee benefit acts or insurance.

14.0 INSURANCE

The insurance requirements for this Contract are specified in the Construction Insurance Specifications. A copy of the Construction insurance Specifications is incorporated herein by this reference.

15.0 PUBLIC RECORDS ACT

A. All records, documents, drawings, plans, specifications, and other material relating to the Contract are subject to the provisions of the California Public Records Act (Government Code §06250 et seq.). The AUTHORITY's use and disclosure of its records are governed by this Act.

B. The Contractor shall identify any specific information or design details that it considers proprietary. The Contractor shall clearly and prominently mark each and every page or sheet of such materials with "PROPRIETARY", as it determines to be appropriate.

16.0 INTEREST

Notwithstanding any other provision of this Contract that may be interpreted to the contrary, interest on damages shall not exceed those provided for under §3287 of the California Civil Code.

END OF SECTION 1.0

APPENDIX A

CALIFORNIA LABOR CODE

PUBLIC WORKS AND PUBLIC AGENCIES

CALIFORNIA LABOR CODE
DIVISION 2, PART 7
PUBLIC WORKS AND PUBLIC AGENCIES

ARTICLE 1

1720. (a) As used in this chapter, "public works" means:

(1) Construction, alteration, demolition, installation, or repair work done under contract and paid for in whole or in part out of public funds, except work done directly by any public utility company pursuant to order of the Public Utilities Commission or other public authority. For purposes of this paragraph, "construction" includes work performed during the design and preconstruction phases of construction including, but not limited to, inspection and land surveying work.

(2) Work done for irrigation, utility, reclamation, and improvement districts, and other districts of this type. "Public work" shall not include the operation of the irrigation or drainage system of any irrigation or reclamation district, except as used in Section 1778 relating to retaining wages.

(3) Street, sewer, or other improvement work done under the direction and supervision or by the authority of any officer or public body of the state, or of any political subdivision or district thereof, whether the political subdivision or district operates under a freeholder's charter or not.

(4) The laying of carpet done under a building lease-maintenance contract and paid for out of public funds.

(5) The laying of carpet in a public building done under contract and paid for in whole or part out of public funds.

(6) Public transportation demonstration projects authorized pursuant to Section 143 of the Streets and Highways Code.

(b) For purposes of this section, "paid for in whole or in part out of public funds" means the payment of money or the equivalent of money by a state or political subdivision directly to or on behalf of the public works contractor, subcontractor, or developer, performance of construction work by the state or political subdivision in execution of the project, transfer of an asset of value for less than fair market price; fees, costs, rents, insurance or bond premiums, loans, interest rates, or other obligations that would normally be required in the execution of the contract, which are paid, reduced, charged at less than fair market value, waived or forgiven; money to be repaid on a contingent basis; or credits applied against repayment obligations.

(c) Notwithstanding subdivision (b):

(1) Private residential projects built on private property are not subject to the requirements of this chapter if the projects are not built pursuant to an agreement with a state agency, redevelopment agency, or local public housing authority.

(2) (A) If the state or a political subdivision requires a private developer to perform construction, alteration, demolition, installation, or repair work on a public work of improvement as a condition of regulatory approval of an otherwise private development project, and the state or political subdivision contributes no more money, or the equivalent of money, to the overall project than is required to perform this public improvement work, and the state or political subdivision maintains no proprietary interest in the overall project, then only the public improvement work shall thereby become subject to this chapter.

(B) If the state or a political subdivision reimburses a private developer for costs that would normally be borne by the public, or provides directly or indirectly a public subsidy to a private development project that is de minimis in the context of the project, an otherwise private development project shall not thereby become subject to the requirements of this chapter.

(3) The construction or rehabilitation of affordable housing units for low- or moderate-income persons pursuant to paragraph (5) or (7) of subdivision (e) of Section 33334.2 of the Health and Safety Code that are paid for solely with moneys from a Low and Moderate Income Housing Fund established pursuant to Section 33334.3 of the Health and Safety Code or that are paid for by a combination of private funds and funds available pursuant to Section 33334.2 or 33334.3 of the Health and Safety Code does not constitute a project that is paid for in whole or in part out of public funds.

(4) "Paid for in whole or in part out of public funds" shall not include tax credits provided pursuant to Section 17053.49 or 23649 of the Revenue and Taxation Code.

(d) Notwithstanding any provision of this section to the contrary, the following projects shall not, solely by reason of this section, be subject to the requirements of this chapter:

(1) Qualified residential rental projects, as defined by Section 142 (d) of the Internal Revenue Code, financed in whole or in part through the issuance of bonds that receive allocation of a portion of the state ceiling pursuant to Chapter 11.8 of Division 1 (commencing with Section 8369.80) of the Government Code on or before December 31, 2003.

(2) Single-family residential projects financed in whole or in part through the issuance of qualified mortgage revenue bonds or qualified veterans' mortgage bonds, as defined by Section 143 of the Internal Revenue Code, or with mortgage credit certificates under a Qualified Mortgage Credit Certificate Program, as defined by Section 25 of the Internal Revenue Code, that receive allocation of a portion of the state ceiling pursuant to Chapter 11.8 of Division 1 (commencing with Section 8869.80) of the Government Code on or before December 31, 2003.

(3) Low-income housing projects that are allocated federal or state low-income housing tax credits pursuant to Section 42 of the Internal Revenue Code, Chapter 3.6 of Division 31 (commencing with Section 50199.4) of the Health and Safety Code, or Sections 12206, 17058, or 23610.5 of the Revenue and Taxation Code, on or before December 31, 2003.

(e) If a statute, other than this section, or an ordinance or regulation, other than an ordinance or regulation adopted pursuant to this section, applies this chapter to a project, the exclusions set forth in subdivision (d) shall not apply to that project.

(f) For purposes of this section, references to the Internal Revenue Code shall mean the Internal Revenue Code of 1986, as amended, and shall include the corresponding predecessor sections of the Internal Revenue Code of 1954, as amended.

1720.2. For the limited purposes of Article 2 (commencing with Section 1770) of this chapter, "public works" also means any construction work done under private contract when all of the following conditions exist:

(a) The construction contract is between private persons.

(b) The property subject to the construction contract is privately owned, but upon completion of the construction work, more than 50 percent of the assignable square feet of the property is leased to the state or a political subdivision for its use.

(c) Either of the following conditions exist:

(1) The lease agreement between the lessor and the state or political subdivision, as lessee, was entered into prior to the construction contract.

(2) The construction work is performed according to plans, specifications, or criteria furnished by the state or political subdivision, and the lease agreement between the lessor and the state or political subdivision, as lessee, is entered into during, or upon completion of, the construction work.

1720.3. For the limited purposes of Article 2 (commencing with Section 1770), "public works" also means the hauling of refuse from a public works site to an outside disposal location, with respect to contracts involving any state agency, including the California State University and the University of California, or any political subdivision of the state.

1720.4. For the limited purposes of this chapter, "public works" shall not include any otherwise covered work which meets all the following conditions:

(a) The work is performed entirely by volunteer labor.

(b) The work involves facilities or structures which are, or will be, used exclusively by, or primarily for or on behalf of, private nonprofit community organizations including, but not limited to, charitable, youth, service, veterans, and sports groups or associations.

(c) The work will not have an adverse impact on employment.

(d) The work is approved by the Director of Industrial Relations as meeting the requirements of this section.

For purposes of subdivision (c), the director shall request information on whether or not the work will have an adverse impact on employment from the appropriate local or state organization of duly authorized employee representatives of workers employed on public works.

1721. "Political subdivision" includes any county, city, district, public housing authority, or public agency of the state, and assessment or improvement districts.

1722. "Awarding body" or "body awarding the contract" means department, board, authority, officer or agent awarding a contract for public work.

1722.1. For the purposes of this chapter, "contractor" and "subcontractor" include a contractor, subcontractor, licensee, officer, agent, or representative thereof, acting in that capacity, when working on public works pursuant to this article and Article 2 (commencing with Section 1770).

1723. "Worker" includes laborer, worker, or mechanic.

1724. "Locality in which public work is performed" means the county in which the public work is done in cases in which the contract is awarded by the State, and means the limits of the political subdivision on whose behalf the contract is awarded in other cases.

1725. "Alien" means any person who is not a born or fully naturalized citizen of the United States.

1726. The body awarding the contract for public work shall take cognizance of violations of the provisions of this chapter committed in the course of the execution of the contract, and shall promptly report any suspected violations to the Labor Commissioner. If the awarding body determines as a result of its own investigation that there has been a violation of this chapter and withholds contract payments, the procedures in Section 1771.6 shall be followed.

1727. (a) Before making payments to the contractor of money due under a contract for public work, the awarding body shall withhold and retain therefrom all amounts required to satisfy any civil wage and penalty assessment issued by the Labor Commissioner under this chapter. The amounts required to satisfy a civil wage and penalty assessment shall not be disbursed by the awarding body until receipt of a final order that is no longer subject to judicial review.

(b) If the awarding body has not retained sufficient money under the contract to satisfy a civil wage and penalty assessment based on a subcontractor's violations, the contractor shall, upon the request of the Labor Commissioner, withhold sufficient money due the subcontractor under the contract to satisfy the assessment and transfer the money to the awarding body. These amounts shall not be disbursed by the awarding body until receipt of a final order that is no longer subject to judicial review.

1728. In cases of contracts with assessment or improvement districts where full payment is made in

the form of a single warrant, or other evidence of full payment, after completion and acceptance of the work, the awarding body shall accept from the contractor in cash a sum equal to, and in lieu of, any amount required to be withheld, retained, or forfeited under the provisions of this section, and said awarding body shall then release the final warrant or payment in full.

1729. It shall be lawful for any contractor to withhold from any subcontractor under him sufficient sums to cover any penalties withheld from him by the awarding body on account of the subcontractor's failure to comply with the terms of this chapter, and if payment has already been made to the subcontractor the contractor may recover from him the amount of the penalty or forfeiture in a suit at law.

1734. Any court collecting any fines or penalties under the criminal provisions of this chapter or any of the labor laws pertaining to public works shall as soon as practicable after the receipt thereof deposit same with the county treasurer of the county in which such court is situated. Amounts so deposited shall be paid at least once a month by warrant of the county auditor drawn upon requisition of the judge or clerk of said court, to the State Treasurer for deposit in the General Fund.

1735. No discrimination shall be made in the employment of persons upon public works because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or sex of such persons, except as provided in Section 12940 of the Government Code, and every contractor for public works violating this section is subject to all the penalties imposed for a violation of this chapter.

1736. During any investigation conducted under this part, the Division of Labor Standards Enforcement shall keep confidential the name of any employee who reports a violation of this chapter and any other information that may identify the employee.

1740. Notwithstanding any other provision of this chapter or any other law of this State, except limitations imposed by the Constitution, the legislative body of a political subdivision which has received or is to receive a loan or grant of funds from the Federal Government or a federal department or agency for public works of that political subdivision, may provide in its call for bids in connection with such public works that all bid specifications and contracts and other procedures in connection with bids or contracts shall be subject to modification to comply with revisions in federal minimum wage schedules without the necessity of republication or duplication of other formal statutory requirements.

1741. If the Labor Commissioner or his or her designee determines after an investigation that there has been a violation of this chapter, the Labor Commissioner shall with reasonable promptness issue a civil wage and penalty assessment to the contractor or subcontractor or both. The assessment shall be in writing and shall describe the nature of the violation and the amount of wages, penalties, and forfeitures due and shall include the basis for the assessment. The assessment shall be served not later than 180 days after the filing of a valid notice of completion in the office of the county recorder in each county in which the public work or some part thereof was performed, or not later than 180 days after acceptance of the public work, whichever occurs last. However, if the assessment is served after the expiration of this 180-day period, but before the expiration of an additional 180 days, and the awarding body has not yet made full payment to the contractor, the assessment is valid up to the amount of the funds retained. Service of the assessment shall be completed pursuant to Section 1013 of the Code of Civil Procedure by first-class and certified mail to the contractor, subcontractor, and awarding body. The assessment shall advise the contractor and subcontractor of the procedure for obtaining review of the assessment. The Labor Commissioner shall, to the extent practicable, ascertain the identity of any bonding company issuing a bond that secures the payment of wages covered by the assessment and any surety on a bond, and shall serve a copy of the assessment by certified mail to the bonding company or surety at the same time service is made to the contractor, subcontractor, and awarding body. However, no bonding company or surety shall be relieved of its responsibilities because it failed to receive notice from the Labor Commissioner.

1742. (a) An affected contractor or subcontractor may obtain review of a civil wage and penalty assessment under this chapter by transmitting a written request to the office of the Labor Commissioner that appears on the assessment within 60 days after service of the assessment. If no hearing is requested within 60 days after service of the assessment, the assessment shall become final.

(b) 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 Labor Commissioner at the hearing within 20 days of the receipt of the written request for a hearing. Any evidence obtained by the Labor Commissioner subsequent to the 20-day cutoff shall be promptly disclosed to the contractor or subcontractor.

The contractor or subcontractor shall have the burden of proving that the basis for the civil wage and penalty assessment is incorrect. The assessment 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, findings, and an order. This decision shall be served on all parties and the awarding body 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 Labor Commissioner. 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 shall adopt regulations setting forth procedures for hearings under this subdivision.

(c) 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.

(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.

(e) A judgment entered pursuant to this section shall bear the same rate of interest and shall have the same effect as other judgments and shall be given the same preference allowed by law on other judgments rendered for claims for taxes. The clerk shall not charge for the service performed by him or her pursuant to this section.

(f) An awarding body that has withheld funds in response to a civil wage and penalty assessment under this chapter shall, upon receipt of a certified copy of a final order that is no longer subject to judicial review, promptly transmit the withheld funds, up to the amount of the certified order, to the Labor Commissioner.

(g) This section shall provide the exclusive method for review of a civil wage and penalty assessment by the Labor Commissioner under this chapter or the decision of an awarding body to withhold contract payments pursuant to Section 1771.5.

(h) This section shall remain in effect only until January 1, 2005, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2005, deletes or extends that date.

1742. (a) An affected contractor or subcontractor may obtain review of a civil wage and penalty assessment under this chapter by transmitting a written request to the office of the Labor Commissioner that appears on the assessment within 60 days after service of the assessment. If no hearing is requested within 60 days after service of the assessment, the assessment shall become final.

(b) (1) Upon receipt of a timely request, a hearing shall be commenced within 90 days before an administrative law judge appointed by the Director of Industrial Relations. The appointed hearing judge 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 Labor Commissioner at the hearing within 20 days of the receipt of the written request for a hearing. Any evidence obtained by the Labor Commissioner subsequent to the 20-day cutoff shall be promptly disclosed to the contractor or subcontractor.

(2) The contractor or subcontractor shall have the burden of proving that the basis for the civil wage and penalty assessment is incorrect. The assessment shall be sufficiently detailed to provide fair notice to the contractor or subcontractor of the issues at the hearing.

(3) Within 45 days of the conclusion of the hearing, the administrative law judge shall issue a written decision affirming, modifying, or dismissing the assessment. The decision of the administrative law judge shall consist of a notice of findings, findings, and an order. This decision shall be served on all parties and the awarding body 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 Labor Commissioner. Within 15 days of the issuance of the decision, the administrative law judge may reconsider or modify the decision to correct an error, except that a clerical error may be corrected at any time.

(4) The Director of Industrial Relations shall adopt regulations setting forth procedures for hearings under this subdivision.

(c) An affected contractor or subcontractor may obtain review of the decision of the administrative law judge 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.

(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.

(e) A judgment entered pursuant to this section shall bear the same rate of interest and shall have the same effect as other judgments and shall be given the same preference allowed by law on other judgments rendered for claims for taxes. The clerk shall not charge for the service performed by him or her pursuant to this section.

(f) An awarding body that has withheld funds in response to a civil wage and penalty assessment under this chapter shall, upon receipt of a certified copy of a final order that is no longer subject to judicial review, promptly transmit the withheld funds, up to the amount of the certified order, to the Labor Commissioner.

(g) This section shall provide the exclusive method for review of a civil wage and penalty assessment by the Labor Commissioner under this chapter or the decision of an awarding body to withhold contract payments pursuant to Section 1771.5.

(h) This section shall become operative on January 1, 2005.

1742.1. (a) After 60 days following the service of a civil wage and penalty assessment under Section 1741 or a notice of withholding under subdivision (a) of 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 assessment or notice subsequently is overturned or modified after administrative or judicial review, liquidated damages shall be payable only on the wages found to be due and unpaid. If the contractor or subcontractor demonstrates to the satisfaction of the director that he or she had substantial grounds for believing the assessment or notice to be in error, the director shall waive payment of the liquidated damages. Any liquidated damages collected shall be distributed to the employee along with the unpaid wages. Section 203.5 shall not apply to claims for prevailing wages under this chapter.

(b) The Labor Commissioner shall, upon receipt of a request from the affected contractor or subcontractor within 30 days following the service of a civil wage and penalty assessment under Section 1741, afford the contractor or subcontractor the opportunity to meet with the Labor Commissioner or his or her designee to attempt to settle a dispute regarding the assessment without the need for formal proceedings. The awarding body shall, upon receipt of a request from the affected contractor or subcontractor within 30 days following the service of a notice of withholding under subdivision (a) of Section 1771.6, afford the contractor or subcontractor the opportunity to meet with the designee of the awarding body to attempt to settle a dispute regarding the notice without the need for formal proceedings. 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 administrative 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. The assessment or notice shall advise the contractor or subcontractor of the opportunity to request a settlement meeting.

This section shall remain in effect only until January 1, 2005, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2005, deletes or extends that date.

1742.1. (a) After 60 days following the service of a civil wage and penalty assessment under Section 1741 or a notice of withholding under subdivision (a) of 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 assessment or notice subsequently is overturned or modified after administrative or judicial review, liquidated damages shall be payable only on the wages found to be due and unpaid. If the contractor or subcontractor demonstrates to the satisfaction of the administrative law judge that he or she had substantial grounds for believing the assessment or notice to be in error, the administrative law judge shall waive payment of the liquidated damages. Any liquidated damages collected shall be distributed to the employee along with the unpaid wages. Section 203.5 shall not apply to claims for prevailing wages under this chapter.

(b) The Labor Commissioner shall, upon receipt of a request from the affected contractor or subcontractor within 30 days following the service of a civil wage and penalty assessment under Section 1741, afford the contractor or subcontractor the opportunity to meet with the Labor Commissioner or his or her designee to attempt to settle a dispute regarding the assessment without the need for formal proceedings. The awarding body shall, upon receipt of a request from the affected contractor or subcontractor within 30 days following the service of a notice of withholding under subdivision (a) of Section 1771.6, afford the contractor or subcontractor the opportunity to meet with the designee of the awarding body to attempt to settle a dispute regarding the notice without the need

for formal proceedings. 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 administrative 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. The assessment or notice shall advise the contractor or subcontractor of the opportunity to request a settlement meeting.

This section shall become operative on January 1, 2005.

1743. (a) The contractor and subcontractor shall be jointly and severally liable for all amounts due pursuant to a final order under this chapter or a judgment thereon. The Labor Commissioner shall first exhaust all reasonable remedies to collect the amount due from the subcontractor before pursuing the claim against the contractor.

(b) From the amount collected, 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.

(c) Wages for workers who cannot be located shall be placed in the Industrial Relations Unpaid Wage Fund and held in trust for the workers pursuant to Section 96.7. Penalties shall be paid into the General Fund.

(d) A final order under this chapter or a judgment thereon shall be binding, with respect to the amount found to be due, on a bonding company issuing a bond that secures the payment of wages and a surety on a bond. The limitations period of any action on a payment bond shall be tolled pending a final order that is no longer subject to judicial review.

1750. (a) (1) The second lowest bidder, and any person, firm, association, trust, partnership, labor organization, corporation, or other legal entity which has, prior to the letting of the bids on the public works project in question, entered into a contract with the second lowest bidder, that suffers damage as a proximate result of a competitive bid for a public works project, as defined in subdivision (b), not being accepted due to the successful bidder's violation, as evidenced by the conviction of the successful bidder therefor, of any provision of Division 4 (commencing with Section 3200) or of the Unemployment Insurance Code, may bring an action for damages in the appropriate state court against the violating person or legal entity.

(2) There shall be a rebuttable presumption that a successful bidder who has been convicted of a violation of any provision of Division 4 (commencing with Section 3200) of this code or of the Unemployment Insurance Code, or of both, was awarded the bid because that successful bidder was able to lower the bid due to this violation or these violations occurring on the contract for public work awarded by the public agency.

(b) For purposes of this article:

(1) "Public works project" means the construction, repair, remodeling, alteration, conversion, modernization, improvement, rehabilitation, replacement, or renovation of a public building or structure.

(2) "Second lowest bidder" means the second lowest qualified bidder deemed responsive by the public agency awarding the contract for public work.

(3) The "second lowest bidder" and the "successful bidder" may include any person, firm, association, corporation, or other legal entity.

(c) In an action brought pursuant to this section, the court may award costs and reasonable attorney's fees, in an amount to be determined in the court's discretion, to the prevailing party.

(d) For purposes of an action brought pursuant to this section, employee status shall be determined pursuant to Division 4 (commencing with Section 3200) with respect to alleged violations of that division, pursuant to the Unemployment Insurance Code with respect to alleged violations of that code, and pursuant to Section 2750.5 with respect to alleged violations of either Division 4 (commencing with Section 3200) or of the Unemployment Insurance Code.

(e) The right of action established pursuant to this article shall not be construed to diminish rights of action established pursuant to Section 19102 of, and Article 1.8 (commencing with Section 20104.70) of Chapter 1 of Part 3 of Division 2 of, the Public Contract Code.

(f) A second lowest bidder who has been convicted of a violation of any provision of Division 4 (commencing with Section 3200) of the Labor Code or of the Unemployment Insurance Code, or both, within one year prior to filing the bid for public work, and who has failed to take affirmative steps to correct that violation or those violations, is prohibited from taking any action authorized by this section.

ARTICLE 2

1770. The Director of the Department of Industrial Relations shall determine the general prevailing rate of per diem wages in accordance with the standards set forth in Section 1773, and the director's determination in the matter shall be final except as provided in Section 1773.4. Nothing in this article, however, shall prohibit the payment of more than the general prevailing rate of wages to any workman employed on public work. Nothing in this act shall permit any overtime work in violation of Article 3 of this chapter.

1771. Except for public works projects of one thousand dollars ($1,000) or less, not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the public work is performed, and not less than the general prevailing rate of per diem wages for holiday and overtime work fixed as provided in this chapter, shall be paid to all workers employed on public works.

This section is applicable only to work performed under contract, and is not applicable to work carried out by a public agency with its own forces. This section is applicable to contracts let for maintenance work.

1771.2. 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) may bring an action in any court of competent jurisdiction against an employer that fails to pay the prevailing wage to its employees, as required by this article. This action shall be commenced not later than 180 days after the filing of a valid notice of completion in the office of the county recorder in each county in which the public work or some part thereof was performed, or not later than 180 days after acceptance of the public work, whichever last occurs.

1771.5. (a) Notwithstanding Section 1771, an awarding body shall not require the payment of the general prevailing rate of per diem wages or the general prevailing rate of per diem wages for holiday and overtime work for any public works project of twenty-five thousand dollars ($25,000) or less when the project is for construction work, or for any public works project of fifteen thousand dollars ($15,000) or less when the project is for alteration, demolition, repair, or maintenance work, if the awarding body elects to initiate and enforce a labor compliance program pursuant to subdivision (b) for every public works project under the authority of the awarding body.

(b) For the purposes of this section, a labor compliance program shall include, but not be limited to, the following requirements:

(1) All bid invitations and public works contracts shall contain appropriate language concerning the requirements of this chapter.

(2) A prejob conference shall be conducted with the contractor and subcontractors to discuss federal and state labor law requirements applicable to the contract.

(3) Project contractors and subcontractors shall maintain and furnish, at a designated time, a certified copy of each weekly payroll containing a statement of compliance signed under penalty of perjury.

(4) The awarding body shall review, and, if appropriate, audit payroll records to verify compliance with this chapter.

(5) The awarding body shall withhold contract payments when payroll records are delinquent or inadequate.

(6) The awarding body shall withhold contract payments equal to the amount of underpayment and applicable penalties when, after investigation, it is established that underpayment has occurred.

1771.6. (a) Any awarding body that enforces this chapter in accordance with Section 1726 or 1771.5 shall provide notice of the withholding of contract payments to the contractor and subcontractor, if applicable. The notice shall be in writing and shall describe the nature of the violation and the amount of wages, penalties, and forfeitures withheld. Service of the notice shall be completed pursuant to Section 1013 of the Code of Civil Procedure by first-class and certified mail to the contractor and subcontractor, if applicable. The notice shall advise the contractor and subcontractor, if applicable, of the procedure for obtaining review of the withholding of contract payments.

The awarding body shall also serve a copy of the notice by certified mail to any bonding company issuing a bond that secures the payment of wages covered by the notice and to any surety on a bond, if their identities are known to the awarding body.

(b) The withholding of contract payments in accordance with Section 1726 or 1771.5 shall be reviewable under Section 1742 in the same manner as if the notice of the withholding was a civil penalty order of the Labor Commissioner under this chapter. If review is requested, the Labor Commissioner may intervene to represent the awarding body.

(c) Pending a final order, or the expiration of the time period for seeking review of the notice of the withholding, the awarding body shall not disburse any contract payments withheld.

(d) 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.

(e) Wages for workers who cannot be located shall be placed in the Industrial Relations Unpaid Wage Fund and held in trust for the workers pursuant to Section 96.7. Penalties shall be paid into the General Fund of the awarding body that has enforced this chapter pursuant to Section 1771.5.

1772. Workers employed by contractors or subcontractors in the execution of any contract for public work are deemed to be employed upon public work.

1773. The body awarding any contract for public work, or otherwise undertaking any public work, shall obtain the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in the locality in which the public work is to be performed for each craft, classification, or type of worker needed to execute the contract from the Director of Industrial Relations. The holidays upon which those rates shall be paid need not be specified by the awarding body, but shall be all holidays recognized in the applicable collective bargaining agreement. If the prevailing rate is not based on a collectively bargained rate, the holidays upon which the prevailing rate shall be paid shall be as provided in Section 6700 of the Government Code.

In determining the rates, the Director of Industrial Relations shall ascertain and consider the applicable wage rates established by collective bargaining agreements and the rates that may have been predetermined for federal public works, within the locality and in the nearest labor market area. Where the rates do not constitute the rates actually prevailing in the locality, the director shall obtain and consider further data from the labor organizations and employers or employer associations concerned, including the recognized collective bargaining representatives for the particular craft, classification, or type of work involved. The rate fixed for each craft, classification, or type of work shall be not less than the prevailing rate paid in the craft, classification, or type of work.

If the director determines that the rate of prevailing wage for any craft, classification, or type of worker is the rate established by a collective bargaining agreement, the director may adopt that rate by reference as provided for in the collective bargaining agreement and that determination shall be effective for the life of the agreement or until the director determines that another rate should be adopted.

1773.1. (a) Per diem wages shall be deemed to include employer payments for health and welfare, pension, vacation, travel, subsistence, and apprenticeship or other training programs authorized by Section 3093, so long as the cost of training is reasonably related to the amount of the contributions, and similar purposes, when the term "per diem wages" is used in this chapter or in any other statute applicable to public works.

(b) Employer payments include all of the following:

(1) The rate of contribution irrevocably made by the employer to a trustee or third person pursuant to a plan, fund, or program.

(2) The rate of actual costs to the employer reasonably anticipated in providing benefits to workers pursuant to an enforceable commitment to carry out a financially responsible plan or program communicated in writing to the workers affected.

(3) Payments to the California Apprenticeship Council pursuant to Section 1777.5.

(c) Employer payments are a credit against the obligation to pay the general prevailing rate of per diem wages. However, no credit shall be granted for benefits required to be provided by other state or federal law. Credits for employer payments also shall not reduce the obligation to pay the hourly straight time or overtime wages found to be prevailing.

(d) The credit for employer payments shall be computed on an annualized basis where the employer seeks credit for employer payments that are higher for public works projects than for private construction performed by the same employer, except where one or more of the following occur:

(1) The employer has an enforceable obligation to make the higher rate of payments on future private construction performed by the employer.

(2) The higher rate of payments is required by a project labor agreement.

(3) The payments are made to the California Apprenticeship Council pursuant to Section 1777.5.

(4) The director determines that annualization would not serve the purposes of this chapter.

(e) For the purpose of determining those per diem wages for contracts, the representative of any craft, classification, or type of worker needed to execute contracts shall file with the Department of Industrial Relations fully executed copies of the collective bargaining agreements for the particular craft, classification, or type of work involved. The collective bargaining agreements shall be filed after their execution and thereafter may be taken into consideration pursuant to Section 1773 whenever filed 30 days prior to the call for bids. If the collective bargaining agreement has not been formalized, a typescript of the final draft may be filed temporarily, accompanied by a statement under penalty of perjury as to its effective date.

Where a copy of the collective bargaining agreement has previously been filed, fully executed copies of all modifications and extensions of the agreement that affect per diem wages or holidays shall be filed.

The failure to comply with filing requirements of this subdivision shall not be grounds for setting aside a prevailing wage determination if the information taken into consideration is correct.

1773.2. The body awarding any contract for public work, or otherwise undertaking any public work, shall specify in the call for bids for the contract, and in the bid specifications and in the contract itself, what the general rate of per diem wages is for each craft, classification, or type of worker needed to execute the contract.

In lieu of specifying the rate of wages in the call for bids, and in the bid specifications and in the contract itself, the awarding body may, in the call for bids, bid specifications, and contract, include a statement that copies of the prevailing rate of per diem wages are on

file at its principal office, which shall be made available to any interested party on request. The awarding body shall also cause a copy of the determination of the director of the prevailing rate of per diem wages to be posted at each job site.

1773.3. An awarding agency whose public works contract falls within the jurisdiction of Section 1777.5 shall, within five days of the award, send a copy of the award to the Division of Apprenticeship Standards. When specifically requested by a local joint apprenticeship committee, the division shall notify the local joint apprenticeship committee regarding all such awards applicable to the joint apprenticeship committee making the request. Within five days of a finding of any discrepancy regarding the ratio of apprentices to journeymen, pursuant to the certificated fixed number of apprentices to journeymen, the awarding agency shall notify the Division of Apprenticeship Standards.

1773.4. Any prospective bidder or his representative, any representative of any craft, classification or type of workman involved, or the awarding body may, within 20 days after commencement of advertising of the call for bids by the awarding body, file with the Director of Industrial Relations a verified petition to review the determination of any such rate or rates upon the ground that they have not been determined in accordance with the provision of Section 1773 of this code. Within two days thereafter, a copy of such petition shall be filed with the awarding body. The petition shall set forth the facts upon which it is based. The Director of Industrial Relations or his authorized representative shall, upon notice to the petitioner, the awarding body and such other persons as he deems proper, including the recognized collective bargaining representatives for the particular crafts, classifications or types of work involved, institute an investigation or hold a hearing. Within 20 days after the filing of such petition, or within such longer period as agreed upon by the director, the awarding body, and all the interested parties, he shall make a determination and transmit the same in writing to the awarding body and to the interested parties.

Such determination shall be final and shall be the determination of the awarding body. Upon receipt by it of the notice of the filing of such petition the body awarding the contract or authorizing the public work shall extend the closing date for the submission of bids or the starting of work until five days after the determination of the general prevailing rates of per diem wages pursuant to this section.

Upon the filing of any such petition, notice thereof shall be set forth in the next and all subsequent publications by the awarding body of the call for bids. No other notice need be given to bidders by the awarding body by publication or otherwise. The determination of the director shall be included in the contract.

1773.5. The Director of Industrial Relations may establish rules and regulations for the purpose of carrying out this chapter, including, but not limited to, the responsibilities and duties of awarding bodies under this chapter.

1773.6. If during any quarterly period the Director of Industrial Relations shall determine that there has been a change in any prevailing rate of per diem wages in any locality he shall make such change available to the awarding body and his determination shall be final. Such determination by the Director of Industrial Relations shall not be effective as to any contract for which the notice to bidders has been published.

1773.7. The provisions of Section 11250 of the Government Code shall not be applicable to Sections 1773, 1773.4, and 1773.6.

1773.9. (a) The Director of Industrial Relations shall use the methodology set forth in subdivision (b) to determine the general prevailing rate of per diem wages in the locality in which the public work is to be performed.

(b) The general prevailing rate of per diem wages includes all of the following:

(1) The basic hourly wage rate being paid to a majority of workers engaged in the particular craft, classification, or type of work within the locality and in the nearest labor market area, if a majority of the workers is paid at a single rate. If no single rate is being paid to a majority of the workers, then the single rate being paid to the greatest number of workers, or modal rate, is prevailing. If a modal rate cannot be determined, then the director shall establish an alternative rate, consistent with the methodology for determining the modal rate, by considering the appropriate collective bargaining agreements, federal rates, rates in the nearest labor market area, or other data such as wage survey data.

(2) Other employer payments included in per diem wages pursuant to Section 1773.1 and as included as part of the total hourly wage rate from which the basic hourly wage rate was derived. In the event the total hourly wage rate does not include any employer payments, the director shall establish a prevailing employer payment rate by the same procedure set forth in paragraph (1).

(3) The rate for holiday and overtime work shall be those rates specified in the collective bargaining agreement when the basic hourly rate is based on a collective bargaining agreement rate. In the event the basic hourly rate is not based on a collective bargaining agreement, the rate for holidays and overtime work, if any, included with the prevailing basic hourly rate of pay shall be prevailing.

(c) If the director determines that the general prevailing rate of per diem wages is the rate established by a collective bargaining agreement, and that the collective bargaining agreement contains definite and predetermined changes during its term

that will affect the rate adopted, the director shall incorporate those changes into the determination. Predetermined changes that are rescinded prior to their effective date shall not be enforced.

1774. The contractor to whom the contract is awarded, and any subcontractor under him, shall pay not less than the specified prevailing rates of wages to all workmen employed in the execution of the contract.

1775. (a) The contractor and any subcontractor under him or her shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit not more than fifty dollars ($50) for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rates as determined by the director for the work or craft in which the worker is employed for any public work done under the contract by him or her or, except as provided in subdivision (b), by any subcontractor under him or her. The amount of this penalty shall be determined by the Labor Commissioner based on consideration of both of the following:

(1) Whether the failure of the contractor or subcontractor to pay the correct rate of per diem wages was a good faith mistake and, if so, the error was promptly and voluntarily corrected upon being brought to the attention of the contractor or subcontractor.

(2) Whether the contractor or subcontractor has a prior record of failing to meet its prevailing wage obligations.

The determination of the Labor Commissioner as to the amount of the penalty shall be reviewable only for abuse of discretion. The difference between the prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate shall be paid to each worker by the contractor or subcontractor, and the body awarding the contract shall cause to be inserted in the contract a stipulation that this section will be complied with.

(b) If a worker employed by a subcontractor on a public works project is not paid the general prevailing per diem wages by the subcontractor, the prime contractor of the project is not liable for any penalties under subdivision (a) unless the prime contractor had knowledge of that failure of the subcontractor to pay the specified prevailing rate of wages to those workers or unless the prime contractor fails to comply with all of the following requirements:

(1) The contract executed between the contractor and the subcontractor for the performance of work on the public works project shall include a copy of the provisions of Sections 1771, 1775, 1776, 1777.5, 1813, and 1815.

(2) The contractor shall monitor the payment of the specified general prevailing rate of per diem wages by the subcontractor to the employees, by periodic review of the certified payroll records of the subcontractor.

(3) Upon becoming aware of the failure of the subcontractor to pay his or her workers the specified prevailing rate of wages, the contractor shall diligently take corrective action to halt or rectify the failure, including, but not limited to, retaining sufficient funds due the subcontractor for work performed on the public works project.

(4) Prior to making final payment to the subcontractor for work performed on the public works project, the contractor shall obtain an affidavit signed under penalty of perjury from the subcontractor that the subcontractor has paid the specified general prevailing rate of per diem wages to his or her employees on the public works project and any amounts due pursuant to Section 1813.

(c) The Division of Labor Standards Enforcement shall notify the contractor on a public works project within 15 days of the receipt by the Division of Labor Standards Enforcement of a complaint of the failure of a subcontractor on that public works project to pay workers the general prevailing rate of per diem wages.

1776. (a) Each contractor and subcontractor shall keep accurate payroll records, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in connection with the public work. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:

(1) The information contained in the payroll record is true and correct.

(2) The employer has complied with the requirements of Sections 1771, 1811, and 1815 for any work performed by his or her employees on the public works project.

(b) The payroll records enumerated under subdivision (a) shall be certified and shall be available for inspection at all reasonable hours at the principal office of the contractor on the following basis:

(1) A certified copy of an employee's payroll record shall be made available for inspection or furnished to the employee or his or her authorized representative on request.

(2) 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.

(3) A certified copy of all payroll records enumerated in subdivision (a) shall be made available upon request by the public for inspection or for copies thereof. However, a request by the public shall be made through either the body awarding the contract, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement. If the requested payroll records have not been provided

pursuant to paragraph (2), the requesting party shall, prior to being provided the records, reimburse the costs of preparation by the contractor, subcontractors, and the entity through which the request was made. The public shall not be given access to the records at the principal office of the contractor.

(c) The certified payroll records shall be on forms provided by the Division of Labor Standards Enforcement or shall contain the same information as the forms provided by the division.

(d) A contractor or subcontractor shall file a certified copy of the records enumerated in subdivision (a) with the entity that requested the records within 10 days after receipt of a written request.

(e) Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by the awarding body, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement shall be marked or obliterated to prevent disclosure of an individual's name, address, and social security number. The name and address of the contractor awarded the contract or the subcontractor performing the contract shall not be marked or obliterated. Any copy of records made available for inspection by, or furnished to, 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) shall be marked or obliterated only to prevent disclosure of an individual's name and social security number. A joint labor management committee may maintain an action in a court of competent jurisdiction against an employer who fails to comply with Section 1774. The court may award restitution to an employee for unpaid wages and may award the joint labor management committee reasonable attorney's fee and costs incurred in maintaining the action. An action under this subdivision may not be based on the employer's misclassification of the craft of a worker on its certified payroll records. Nothing in this subdivision limits any other available remedies for a violation of this chapter.

(f) The contractor shall inform the body awarding the contract of the location of the records enumerated under subdivision (a), including the street address, city and county, and shall, within five working days, provide a notice of a change of location and address.

(g) The contractor or subcontractor shall have 10 days in which to comply subsequent to receipt of a 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. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, these penalties shall be withheld from progress payments then due. A contractor is not subject to a penalty assessment pursuant to this section due to the failure of a subcontractor to comply with this section.

(h) The body awarding the contract shall cause to be inserted in the contract stipulations to effectuate this section.

(i) The director shall adopt rules consistent with the California Public Records Act, (Chapter 3.5 (commencing with Section 6250), Division 7, Title 1, Government Code) and the Information Practices Act of 1977, (Title 1.8 (commencing with Section 1798), Part 4, Division 3, Civil Code) governing the release of these records, including the establishment of reasonable fees to be charged for reproducing copies of records required by this section.

(j) This section shall remain in effect only until January 1, 2003, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2003, deletes or extends that date.

1776. (a) Each contractor and subcontractor shall keep an accurate payroll record, showing the name, address, social security number, work classification, and straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in connection with the public work.

(b) The payroll records enumerated under subdivision (a) shall be certified and shall be available for inspection at all reasonable hours at the principal office of the contractor on the following basis:

(1) A certified copy of an employee's payroll record shall be made available for inspection or furnished to the employee or his or her authorized representative on request.

(2) 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.

(3) A certified copy of all payroll records enumerated in subdivision (a) shall be made available upon request by the public for inspection or for copies thereof. However, a request by the public shall be made through either the body awarding the contract, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement. If the requested payroll records have not been provided pursuant to paragraph (2), the requesting party shall, prior to being provided the records, reimburse the costs of preparation by the contractor, subcontractors, and the entity through which the request was made. The public shall not be given access to the records at the principal office of the contractor.

(c) The certified payroll records shall be on forms provided by the Division of Labor Standards Enforcement or shall contain the same information as the forms provided by the division.

(d) Each contractor shall file a certified copy of the records enumerated in subdivision (a) with the entity

that requested the records within 10 days after receipt of a written request.

(e) Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by the awarding body, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement shall be marked or obliterated to prevent disclosure of an individual's name, address, and social security number. The name and address of the contractor awarded the contract or performing the contract shall not be marked or obliterated. Any copy of records made available for inspection by, or furnished to, 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) shall be marked or obliterated only to prevent disclosure of an individual's social security number.

(f) The contractor shall inform the body awarding the contract of the location of the records enumerated under subdivision (a), including the street address, city and county, and shall, within five working days, provide a notice of a change of location and address.

(g) The contractor shall have 10 days in which to comply subsequent to receipt of written notice specifying in what respects the contractor must comply with this section. In the event that the contractor 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. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, these penalties shall be withheld from progress payments then due.

(h) The body awarding the contract shall cause to be inserted in the contract stipulations to effectuate this section. These stipulations shall fix the responsibility for compliance with this section on the prime contractor.

(i) The director shall adopt rules consistent with the California Public Records Act, (Chapter 3.5 (commencing with Section 6250), Division 7, Title 1, Government Code) and the Information Practices Act of 1977, (Title 1.8 (commencing with Section 1798), Part 4, Division 3, Civil Code) governing the release of these records, including the establishment of reasonable fees to be charged for reproducing copies of records required by this section.

(j) This section shall become operative January 1, 2003.

1777. Any officer, agent, or representative of the State or of any political subdivision who wilfully violates any provision of this article, and 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.

1777.1. (a) Whenever a contractor or subcontractor performing a public works project pursuant to this chapter is found by the Labor Commissioner to be in violation of this chapter with intent to defraud, except Section 1777.5, the contractor or subcontractor or a firm, corporation, partnership, or association in which the contractor or subcontractor has any interest is ineligible for a period of not less than one year or more than three years to do either of the following:

(1) Bid on or be awarded a contract for a public works project.

(2) Perform work as a subcontractor on a public works project.

(b) Whenever a contractor or subcontractor performing a public works project pursuant to this chapter is found by the Labor Commissioner to be in willful violation of this chapter, except Section 1777.5, the contractor or subcontractor or a firm, corporation, partnership, or association in which the contractor or subcontractor has any interest is ineligible for a period up to three years for each second and subsequent violation occurring within three years of a separate and previous willful violation of this chapter to do either of the following:

(1) Bid on or be awarded a contract for a public works project.

(2) Perform work as a subcontractor on a public works project.

(c) A willful violation occurs when the contractor or subcontractor knew or reasonably should have known of his or her obligations under the public works law and deliberately fails or refuses to comply with its provisions.

(d) Not less than semiannually, the Labor Commissioner shall publish and distribute to awarding bodies a list of contractors who are ineligible to bid on or be awarded a public works contract, or to perform work as a subcontractor on a public works project pursuant to this chapter. The list shall contain the name of the contractor, the Contractor's State License Board license number of the contractor, and the effective period of debarment of the contractor. The commissioner shall also place advertisements in construction industry publications targeted to the contractors and subcontractors, chosen by the commissioner, that state the effective period of the debarment and the reason for debarment. The advertisements shall appear one time for each debarment of a contractor in each publication chosen by the commissioner. The debarred contractor or subcontractor shall be liable to the commissioner for the reasonable cost of the advertisements, not to exceed five thousand dollars ($5,000). The amount paid to the commissioner for the advertisements shall be credited against the contractor's or subcontractor's obligation to pay civil fines or penalties for the same willful violation of this chapter.

(e) For purposes of this section, "contractor or subcontractor" means a firm, corporation, partnership, or association and its responsible managing officer, as well as any supervisors, managers, and officers

found by the Labor Commissioner to be personally and substantially responsible for the willful violation of this chapter.

(f) For the purposes of this section, the term "any interest" means an interest in the entity bidding or performing work on the public works project, whether as an owner, partner, officer, manager, employee, agent, consultant, or representative. "Any interest" includes, but is not limited to, all instances where the debarred contractor or subcontractor receives payments, whether cash or any other form of compensation, from any entity bidding or performing work on the public works project, or enters into any contracts or agreements with the entity bidding or performing work on the public works project for services performed or to be performed for contracts that have been or will be assigned or sublet, or for vehicles, tools, equipment, or supplies that have been or will be sold, rented, or leased during the period from the initiation of the debarment proceedings until the end of the term of the debarment period. "Any interest" does not include shares held in a publicly traded corporation if the shares were not received as compensation after the initiation of debarment from an entity bidding or performing work on a public works project.

(g) For the purposes of this section, the term "entity" is defined as a company, limited liability company, association, partnership, sole proprietorship, limited liability partnership, corporation, business trust, or organization.

(h) The Labor Commissioner shall adopt rules and regulations for the administration and enforcement of this section.

1777.5. (a) Nothing in this chapter shall prevent the employment of properly registered apprentices upon public works.

(b) Every apprentice employed upon public works shall be paid the prevailing rate of per diem wages for apprentices in the trade to which he or she is registered and shall be employed only at the work of the craft or trade to which he or she is registered.

(c) Only apprentices, as defined in Section 3077, who are in training under apprenticeship standards that have been approved by the Chief of the Division of Apprenticeship Standards and who are parties to written apprentice agreements under Chapter 4 (commencing with Section 3070) of Division 3 are eligible to be employed at the apprentice wage rate on public works. The employment and training of each apprentice shall be in accordance with either (1) the apprenticeship standards and apprentice agreements under which he or she is training or (2) the rules and regulations of the California Apprenticeship Council.

(d) When the contractor to whom the contract is awarded by the state or any political subdivision, in performing any of the work under the contract, employs workers in any apprenticeable craft or trade, the contractor shall employ apprentices in at least the ratio set forth in this section and may apply to any apprenticeship program in the craft or trade that can provide apprentices to the site of the public work for a certificate approving the contractor under the apprenticeship standards for the employment and training of apprentices in the area or industry affected. However, the decision of the apprenticeship program to approve or deny a certificate shall be subject to review by the Administrator of Apprenticeship. The apprenticeship program or programs, upon approving the contractor, shall arrange for the dispatch of apprentices to the contractor. A contractor covered by an apprenticeship program's standards shall not be required to submit any additional application in order to include additional public works contracts under that program. "Apprenticeable craft or trade," as used in this section, means a craft or trade determined as an apprenticeable occupation in accordance with rules and regulations prescribed by the California Apprenticeship Council. As used in this section, "contractor" includes any subcontractor under a contractor who performs any public works not excluded by subdivision (o).

(e) Prior to commencing work on a contract for public works, every contractor shall submit contract award information to an applicable apprenticeship program that can supply apprentices to the site of the public work. The information submitted shall include an estimate of journeyman hours to be performed under the contract, the number of apprentices proposed to be employed, and the approximate dates the apprentices would be employed. A copy of this information shall also be submitted to the awarding body if requested by the awarding body.

Within 60 days after concluding work on the contract, each contractor and subcontractor shall submit to the awarding body, if requested, and to the apprenticeship program a verified statement of the journeyman and apprentice hours performed on the contract. The information under this subdivision shall be public. The apprenticeship programs shall retain this information for 12 months.

(f) The apprenticeship program that can supply apprentices to the area of the site of the public work shall ensure equal employment and affirmative action in apprenticeship for women and minorities.

(g) The ratio of work performed by apprentices to journeymen employed in a particular craft or trade on the public work may be no higher than the ratio stipulated in the apprenticeship standards under which the apprenticeship program operates where the contractor agrees to be bound by those standards, but, except as otherwise provided in this section, in no case shall the ratio be less than one hour of apprentice work for every five hours of journeyman work.

(h) This ratio of apprentice work to journeyman work shall apply during any day or portion of a day when any journeyman is employed at the jobsite and shall be computed on the basis of the hours worked during the day by journeymen so employed. Any work performed by a journeyman in excess of eight hours per day or 40 hours per week shall not be used to

calculate the ratio. The contractor shall employ apprentices for the number of hours computed as above before the end of the contract or, in the case of a subcontractor, before the end of the subcontract. However, the contractor shall endeavor, to the greatest extent possible, to employ apprentices during the same time period that the journeymen in the same craft or trade are employed at the jobsite. Where an hourly apprenticeship ratio is not feasible for a particular craft or trade, the Chief of the Division of Apprenticeship Standards, upon application of an apprenticeship program, may order a minimum ratio of not less than one apprentice for each five journeymen in a craft or trade classification.

(i) A contractor covered by this section that has agreed to be covered by an apprenticeship program's standards upon the issuance of the approval certificate, or that has been previously approved for an apprenticeship program in the craft or trade, shall employ the number of apprentices or the ratio of apprentices to journeymen stipulated in the applicable apprenticeship standards, but in no event less than the 1-to-5 ratio required by subdivision (g).

(j) Upon proper showing by a contractor that he or she employs apprentices in a particular craft or trade in the state on all of his or her contracts on an annual average of not less than one hour of apprentice work for every five hours of labor performed by journeymen, the Chief of the Division of Apprenticeship Standards may grant a certificate exempting the contractor from the 1-to-5 hourly ratio, as set forth in this section for that craft or trade.

(k) An apprenticeship program has the discretion to grant to a participating contractor or contractor association a certificate, which shall be subject to the approval of the Administrator of Apprenticeship, exempting the contractor from the 1-to-5 ratio set forth in this section when it finds that any one of the following conditions is met:

(1) Unemployment for the previous three-month period in the area exceeds an average of 15 percent.

(2) The number of apprentices in training in the area exceeds a ratio of 1 to 5.

(3) There is a showing that the apprenticeable craft or trade is replacing at least one-thirtieth of its journeymen annually through apprenticeship training, either on a statewide basis or on a local basis.

(4) Assignment of an apprentice to any work performed under a public works contract would create a condition that would jeopardize his or her life or the life, safety, or property of fellow employees or the public at large, or the specific task to which the apprentice is to be assigned is of a nature that training cannot be provided by a journeyman.

(l) When an exemption is granted pursuant to subdivision (k) to an organization that represents contractors in a specific trade from the 1-to-5 ratio on a local or statewide basis, the member contractors will not be required to submit individual applications for approval to local joint apprenticeship committees, if they are already covered by the local apprenticeship standards.

(m) (1) A contractor to whom a contract is awarded, who, in performing any of the work under the contract, employs journeymen or apprentices in any apprenticeable craft or trade shall contribute to the California Apprenticeship Council the same amount that the director determines is the prevailing amount of apprenticeship training contributions in the area of the public works site. A contractor may take as a credit for payments to the council any amounts paid by the contractor to an approved apprenticeship program that can supply apprentices to the site of the public works project. The contractor may add the amount of the contributions in computing his or her bid for the contract.

(2) At the conclusion of each fiscal year, the California Apprenticeship Council shall distribute training contributions received by the council under this subdivision, less the expenses of the Division of Apprenticeship Standards for administering this subdivision, by making grants to approved apprenticeship programs for the purpose of training apprentices. The funds shall be distributed as follows:

(A) If there is an approved multiemployer apprenticeship program serving the same craft or trade and geographic area for which the training contributions were made to the council, a grant to that program shall be made.

(B) If there are two or more approved multiemployer apprenticeship programs serving the same craft or trade and geographic area for which the training contributions were made to the council, the grant shall be divided among those programs based on the number of apprentices registered in each program.

(C) All training contributions not distributed under subparagraphs (A) and (B) shall be used to defray the future expenses of administering this subdivision.

(3) All training contributions received pursuant to this subdivision shall be deposited in the Apprenticeship Training Contribution Fund, which fund is hereby created in the State Treasury. Notwithstanding Section 13340 of the Government Code, all money in the Apprenticeship Training Contribution Fund is hereby continuously appropriated for the purpose of carrying out this subdivision and to pay the expenses of the division in administering this subdivision.

(n) The body awarding the contract shall cause to be inserted in the contract stipulations to effectuate this section. The stipulations shall fix the responsibility of compliance with this section for all apprenticeable occupations with the prime contractor.

(o) This section does not apply to contracts of general contractors or to contracts of specialty contractors not bidding for work through a general or prime contractor when the contracts of general contractors or those specialty contractors involve less than thirty thousand dollars ($30,000).

(p) All decisions of an apprenticeship program under this section are subject to Section 3081.

1777.6. It shall be unlawful for an employer or a labor union to refuse to accept otherwise qualified employees as registered apprentices on any public works, on the ground of the race, religious creed, color, national origin, ancestry, sex, or age, except as provided in Section 3077, of such employee.

1777.7. (a) (1) A contractor or subcontractor that is determined by the Chief of the Division of Apprenticeship Standards to have knowingly violated Section 1777.5 shall forfeit as a civil penalty an amount not exceeding one hundred dollars ($100) for each full calendar day of noncompliance. The amount of this penalty may be reduced by the Chief if the amount of the penalty would be disproportionate to the severity of the violation. A contractor or subcontractor that knowingly commits a second or subsequent violation of Section 1777.5 within a three-year period, where the noncompliance results in apprenticeship training not being provided as required by this chapter, shall forfeit as a civil penalty the sum of not more than three hundred dollars ($300) for each full calendar day of noncompliance. Notwithstanding Section 1727, upon receipt of a determination that a civil penalty has been imposed by the Chief, the awarding body shall withhold the amount of the civil penalty from contract progress payments then due or to become due.

(2) In lieu of the penalty provided for in this subdivision, the Chief may, for a first-time violation and with the concurrence of an apprenticeship program described in subdivision (d), order the contractor or subcontractor to provide apprentice employment equivalent to the work hours that would have been provided for apprentices during the period of noncompliance.

(b) In the event a contractor or subcontractor is determined by the Chief to have knowingly committed a serious violation of any provision of Section 1777.5, the Chief may also deny to the contractor or subcontractor, and to its responsible officers, the right to bid on or be awarded or perform work as a subcontractor on any public works contract for a period of up to one year for the first violation and for a period of up to three years for a second or subsequent violation. Each period of debarment shall run from the date the determination of noncompliance by the Chief becomes a final order of the Administrator of Apprenticeship.

(c) (1) An affected contractor, subcontractor, or responsible officer may obtain a review of the determination of the Chief imposing the debarment or civil penalty by transmitting a written request to the office of the Administrator within 30 days after service of the determination of debarment or civil penalty. A copy of this report shall also be served on the Chief. If the Administrator does not receive a timely request for review of the determination of debarment or civil penalty made by the Chief, the order shall become the final order of the Administrator.

(2) Within 20 days of the timely receipt of a request for review, the Chief shall provide the contractor, subcontractor, or responsible officer the opportunity to review any evidence the Chief may offer at the hearing. The Chief shall also promptly disclose any nonprivileged documents obtained after the 20-day time limit at a time set forth for exchange of evidence by the Administrator.

(3) Within 90 days of the timely receipt of a request for review, a hearing shall be commenced before the Administrator or an impartial hearing officer designated by the Administrator and possessing the qualifications of an administrative law judge pursuant to subdivision (b) of Section 11502 of the Government Code. The affected contractor, subcontractor, or responsible officer shall have the burden of providing evidence of compliance with Section 1777.5.

(4) Within 45 days of the conclusion of the hearing, the Administrator shall issue a written decision affirming, modifying, or dismissing the determination of debarment or civil penalty. The decision shall contain a statement of the factual and legal basis for the decision and an order. This decision shall be served on all parties and the awarding body pursuant to Section 1013 of the Code of Civil Procedure by first-class mail at the last known address of the party that the party has filed with the Administrator. Within 15 days of issuance of the decision, the Administrator may reconsider or modify the decision to correct an error, except that a clerical error may be corrected at any time.

(5) An affected contractor, subcontractor, or responsible officer who has timely requested review and obtained a decision under paragraph (4) may obtain review of the decision of the Administrator 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 final decision. If no timely petition for a writ of mandate is filed, the decision shall become the final order of the Administrator. The decision of the Administrator shall be affirmed unless the petitioner shows that the Administrator abused his or her discretion. If the petitioner claims 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 light of the entire record.

(6) The Chief may certify a copy of the final order of the Administrator and file it with 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. A judgment entered pursuant to this section shall bear the same rate of interest and shall have the same effect as other judgments and be given the same preference allowed by the 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. An awarding body that has withheld funds in response to a determination by the Chief imposing a penalty under this section shall,

upon receipt of a certified copy of a final order of the Administrator, promptly transmit the withheld funds, up to the amount of the certified order, to the Administrator.

(d) If a subcontractor is found to have violated Section 1777.5, the prime contractor of the project is not liable for any penalties under subdivision (a), unless the prime contractor had knowledge of the subcontractor's failure to comply with the provisions of Section 1777.5 or unless the prime contractor fails to comply with any of the following requirements:

(1) The contract executed between the contractor and the subcontractor or the performance of work on the public works project shall include a copy of the provisions of Sections 1771, 1775, 1776, 1777.5, 1813, and 1815.

(2) The contractor shall continually monitor a subcontractor's use of apprentices required to be employed on the public works project pursuant to subdivision (d) of Section 1777.5, including, but not limited to, periodic review of the certified payroll of the subcontractor.

(3) Upon becoming aware of a failure of the subcontractor to employ the required number of apprentices, the contractor shall take corrective action, including, but not limited to, retaining funds due the subcontractor for work performed on the public works project until the failure is corrected.

(4) Prior to making the final payment to the subcontractor for work performed on the public works project, the contractor shall obtain a declaration signed under penalty of perjury from the subcontractor that the subcontractor has employed the required number of apprentices on the public works project.

(e) Any funds withheld by the awarding body pursuant to this section shall be deposited in the General Fund if the awarding body is a state entity, or in the equivalent fund of an awarding body if the awarding body is an entity other than the state.

(f) The Chief shall consider, in setting the amount of a monetary penalty, in determining whether a violation is serious, and in determining whether and for how long a party should be debarred for violating this section, all of the following circumstances:

(1) Whether the violation was intentional.

(2) Whether the party has committed other violations of Section 1777.5.

(3) Whether, upon notice of the violation, the party took steps to voluntarily remedy the violation.

(4) Whether, and to what extent, the violation resulted in lost training opportunities for apprentices.

(5) Whether, and to what extent, the violation otherwise harmed apprentices or apprenticeship programs.

If a party seeks review of a decision by the Chief to impose a monetary penalty or period of debarment, the Administrator shall decide de novo the appropriate penalty, by considering the same factors set forth above.

(g) The interpretation of Section 1777.5 and this section shall be in accordance with the regulations of the California Apprenticeship Council. The Administrator may adopt regulations to establish guidelines for the imposition of monetary penalties and periods of debarment and may designate precedential decisions under section 11425.60 of the Government Code.

1778. Every person, who individually or as a representative of an awarding or public body or officer, or as a contractor or subcontractor doing public work, or agent or officer thereof, who takes, receives, or conspires with another to take or receive, for his own use or the use of any other person any portion of the wages of any workman or working subcontractor, in connection with services rendered upon any public work is guilty of a felony.

1779. Any person or agent or officer thereof who charges, collects, or attempts to charge or collect, directly or indirectly, a fee or valuable consideration for registering any person for public work, or for giving information as to where such employment may be procured, or for placing, assisting in placing, or attempting to place, any person in public work, whether the person is to work directly for the State, or any political subdivision or for a contractor or subcontractor doing public work is guilty of a misdemeanor.

1780. Any person acting on behalf of the State or any political subdivision, or any contractor or subcontractor or agent or representative thereof, doing any public work who places any order for the employment of a workman on public work where the filling of the order for employment involves the charging of a fee, or the receiving of a valuable consideration from any applicant for employment is guilty of a misdemeanor.

ARTICLE 3

1810. Eight hours labor constitutes a legal day's work in all cases where the same is performed under the authority of any law of this State, or under the direction, or control, or by the authority of any officer of this State acting in his official capacity, or under the direction, or control or by the authority of any municipal corporation, or of any officer thereof. A stipulation to that effect shall be made a part of all contracts to which the State or any municipal corporation therein is a party.

1811. The time of service of any workman employed upon public work is limited and restricted to 8 hours during any one calendar day, and 40 hours during any one calendar week, except as hereinafter provided for under Section 1815.

1812. Every contractor and subcontractor shall keep an accurate record showing the name of and actual hours worked each calendar day and each calendar week by each worker employed by him or her in connection with the public work. The record shall be kept open at all reasonable hours to the inspection of the awarding body and to the Division of Labor Standards Enforcement.

1813. The contractor or subcontractor 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 worker employed in the execution of the contract by the respective contractor or subcontractor for each calendar day during which the worker is required or permitted to work more than 8 hours in any one calendar day and 40 hours in any one calendar week in violation of the provisions of this article. In awarding any contract for public work, the awarding body shall cause to be inserted in the contract a stipulation to this effect. The awarding body shall take cognizance of all violations of this article committed in the course of the execution of the contract, and shall report them to the Division of Labor Standards Enforcement.

This section shall remain in effect only until January 1, 2003, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2003, deletes or extends that date.

1813. The contractor 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 workman employed in the execution of the contract by the contractor or by any subcontractor for each calendar day during which the workman is required or permitted to work more than 8 hours in any one calendar day and 40 hours in any one calendar week in violation of the provisions of this article. In awarding any contract for public work, the awarding body shall cause to be inserted therein a stipulation to this effect. The awarding body shall take cognizance of all violations of this article committed in the course of the execution of the contract, and shall report them to the officer of the state or political subdivision who is authorized to pay the contractor money due him or her under the contract.

This section shall become operative January 1, 2003.

1814. Any officer, agent, or representative of the State or any political subdivision who violates any provision of this article and any contractor or subcontractor or agent or representative thereof doing public work who neglects to comply with any provision of Section 1812 is guilty of a misdemeanor.

1815. Notwithstanding the provisions of Sections 1810 to 1814, inclusive, of this code, and notwithstanding any stipulation inserted in any contract pursuant to the requirements of said sections, work performed by employees of contractors in excess of 8 hours per day, and 40 hours during any one week, shall be permitted upon public work upon compensation for all hours worked in excess of 8 hours per day at not less than 11/2 times the basic rate of pay.

1860. The awarding body shall cause to be inserted in every public works contract a clause providing that, in accordance with the provisions of Section 3700 of the Labor Code, every contractor will be required to secure the payment of compensation to his employees.

1861. Each contractor to whom a public works contract is awarded shall sign and file with the awarding body the following certification prior to performing the work of the contract: "I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract."

APPENDIX B

CALIFORNIA CODE OF REGULATIONS

DEPARTMENT OF INDUSTRIAL RELATIONS

PUBLIC WORKS

Chapter 8. Office of the Director

Subchapter 3. Payment of Prevailing Wages upon Public Works

Article 1. Definitions

§16000. Definitions.

The following terms are defined for general use in these regulations within Group 3, Payment of Prevailing Wages Upon Public Works and Group 4, Awarding Body Labor Compliance Programs:

Area of Determination. The area of determining the prevailing wage is the "locality" and/or the "nearest labor market area" as determined by the Director. In determining the area, the mobility of each craft, classification and type of work will be considered.

Awarding body. Any state or local government agency, department, board, commission, bureau, district, office, authority, political subdivision, regional district officer, employee, or agent awarding/letting a contract/purchase order for public works.

Bid. Any proposal submitted to an awarding body in competitive bidding for the construction, alteration, demolition, repair, maintenance, or improvement of any structure, building, road, property, or other improvement of any kind.

Certified. The affirmation of a person with the authority to so affirm, under the penalty of perjury that the records are originals or are full, true and correct copies of the original and depict truly, fully and correctly the craft or type of work performed, hours and days worked, and the amounts by category listed, disbursed by way of cash, check, or in whatever form or manner to each person by job classification and/or skill pursuant to a public works contract.

Chief of DAS. Chief of Division of Apprenticeship Standards or a duly authorized representative.

Chief of DLSE/Labor Commissioner. Chief of the Division of Labor Standards Enforcement or a duly authorized representative.

Chief of DLSR. Chief of the Division of Labor Statistics and Research or a duly authorized representative.

Coverage. This means being subject to the requirements of Part 7, Chapter 1 of the Labor Code as a "public work." This includes all formal coverage determinations issued by the Director of Industrial Relations.

DAS. Division of Apprenticeship Standards.

Date of Notice or Call for Bids. The date the first notice inviting bids was published in a newspaper of general circulation or promulgated in a legally sufficient manner which results in a contract being awarded with or without competitive bidding. This may also be referred to as the Bid Advertisement Date.

Days. Unless otherwise specified means calendar days.

DLSE. The Division of Labor Standards Enforcement.

DLSR. The Division of Labor Statistics and Research.

Director. The Director of the Department of Industrial Relations or his/her duly authorized representative.

Duly Authorized Representative. An employee of the Department of Industrial Relations.

Effective Date. The date upon which the determinations of the Director go into effect. This date is ten days after the issue date of the determination.

Employer Payments. Includes:

(1) The rate of contribution irrevocably made by a contractor or subcontractor to a trustee or to a third person pursuant to a fund, plan, or program for the benefit of employees, their families and dependents, or retirees;

(2) The rate of costs to the contractor or subcontractor which may be reasonably anticipated in providing benefits to employees, their families and dependents or to retirees pursuant to an enforceable commitment or agreement to carry out a financially responsible plan or program which was communicated in writing to the workers affected; and

(3) The rate of contribution irrevocably made by the contractor or subcontractor for apprenticeship or other training programs authorized by Section 3071 and/or 3093 of the Labor Code.

Expiration Date. The date upon which the determinations of the Director are subject to change.

General Prevailing Rate of Per Diem Wages. Includes:

(1) The prevailing basic straight-time hourly rate of pay; and

(2) The prevailing rate for holiday and overtime work; and

(3) The prevailing rate of employer payments for any or all programs or benefits for employees, their families and dependents, and retirees which are of the types enumerated below:

(A) medical and hospital care, prescription drugs, dental care, vision care, diagnostic services, and other health and welfare benefits;

(B) retirement plan benefits;

(C) vacations and holidays with pay, or cash payments in lieu thereof;

(D) compensation for injuries or illnesses resulting from occupational activity;

(E) life, accidental death and dismemberment, and disability or sickness and accident insurance;

(F) supplemental unemployment benefits;

(G) thrift, security savings, supplemental trust, and beneficial trust funds otherwise designated, provided all of the money except that used for reasonable administrative expenses is returned to the employees;

(H) occupational health and safety research, safety training, monitoring job hazards, and the like, as specified in the applicable collective bargaining agreement;

(I) See definition of "Employer Payments," (3).

(J) other bonafide benefits for employees, their families and dependents, or retirees as the Director may determine; and

(4) travel time and subsistence pay as provided for in Labor Code Section 1773.8.

(b) The term "general prevailing rate of per diem wages" does not include any employer payments for:

(1) Job related expenses other than travel time and subsistence pay;

(2) Contract administration, operation of hiring halls, grievance processing, or similar purposes except for those amounts specifically earmarked and actually used for administration of those types of employee or retiree benefit plans enumerated above;

(3) Union, organizational, professional or other dues except as they may be included in and withheld from the basic taxable hourly wage rate;

(4) Industry or trade promotion;

(5) Political contributions or activities;

(6) Any benefit for employees, their families and dependents, or retirees including any benefit enumerated above where the contractor or subcontractor is required by Federal, State, or local law to provide such benefit; or

(7) Such other payments as the Director may determine to exclude. Interested Party. When used with reference to a particular prevailing wage determination made by the Director, includes:

(1) Any contractor or subcontractor, or any organization, association, or other representative of any contractor or subcontractor likely to bid on or to perform a contract for public work which is subject to the particular prevailing wage determinations, and/or

(2) Any worker in the particular craft, classification, or type of work, who may be employed on a public work project subject to the particular prevailing wage determination, or any labor organization or other representative of such a person, including the recognized collective bargaining representative for the particular craft, classification, or type of work; and/or

(3) Any awarding body or association or other representative of awarding bodies concerned with the administration of a pubic works contract or proposed contract, which is subject to the particular prevailing wage determination.

Helper. Any subjourneyman classification traditionally used to assist a journeyman. Under no circumstance may the Helper classification be used to replace statutorily required Apprentices.

Identify or Give Notice of Identity. This means to state the name, job title, address and current telephone number of a person or entity.

Interim Determination. Those determinations of the Director issued between the quarterly updates.

Issue Date-Issuance. The date upon which copies of the determination of the Director are deposited in the mail.

LCP. A labor compliance program initiated and enforced by an awarding body in accordance with these regulations.

Locality. See Labor Code Section 1724.

Maintenance. Includes:

(1) Routine, recurring and usual work for the preservation, protection and keeping of any publicly owned or publicly operated facility (plant, building, structure, ground facility, utility system or any real property) for its intended purposes in a safe and continually usable condition for which it has been designed, improved, constructed, altered or repaired.

(2) Carpentry, electrical, plumbing, glazing, [touchup painting,] and other craft work designed to preserve the publicly owned or publicly operated facility in a safe, efficient and continuously usable condition for

which it was intended, including repairs, cleaning and other operations on machinery and other equipment permanently attached to the building or realty as fixtures.

Exception: 1: Janitorial or custodial services of a routine, recurring or usual nature is excluded.

Exception: 2: Protection of the sort provided by guards, watchmen, or other security forces is excluded.

(3) Landscape maintenance. See Public Contract Code Section 21002.

Exception: Landscape maintenance work by "sheltered workshops" is excluded.

Mistake, Inadvertence, or Neglect. Mistake, inadvertence, or neglect in failing to pay the correct general rate of per diem wages means the lack of knowledge that any reasonable person would also be expected to have under the same or similar circumstances.

Nearest labor market Area. The nearest geographical area from which workers of the crafts, classifications, and types to be used in the performance and execution of the public work can be drawn for employment upon such public work.

Payroll Records. All time cards, cancelled checks, cash receipts, trust fund forms, books, documents, schedules, forms, reports, receipts or other evidences which reflect job assignments, work schedules by days and hours, and the disbursement by way of cash, check, or in whatever form or manner, of funds to a person(s) by job classification and/or skill pursuant to a public works project.

Person. Any individual [or legal entity, including a] partnership, corporation, association, or any local, state, regional, national or international organization, public or private, or any awarding body, or any agent or officer thereof, authorized to act for or on behalf of any of the foregoing.

Political Subdivision. See Labor Code Section 1721.

Predetermined Changes. Definite changes to the basic hourly wage rate, overtime, holiday pay rates, and employer payments which are known and enumerated in the applicable collective bargaining agreement at the time of the bid advertisement date and which are referenced in the general prevailing rate of per diem wages as defined in Section 16000 of these regulations. Contractors are obligated to pay up to the amount that was predetermined if these changes are modified prior to their effective date. Predetermined changes which are rescinded prior to their effective date shall not be enforced.

Prevailing Rate. Includes:

(1) The basic hourly rate being paid to a majority of workers engaged in the particular craft, classification or type of work within the locality and in the nearest labor market area, if a majority of such workers is paid at a single rate; if there is no single rate being paid to a majority, then the single rate (modal rate) being paid to the greater number of workers is prevailing. If there is no modal rate, then an alternate rate will be established by considering the appropriate collective bargaining agreements, Federal rates or other data such as wage survey data, including the nearest labor market area, or expanded survey as provided in Article 4 of these regulations;

(2) Other employer payments as defined in Section 16000 of these regulations and as included as part of the total hourly wage rate, from which the prevailing basic hourly wage rate was derived. In the event the total hourly wage rate does not include any employer payments, then the Director may establish a prevailing employer payment rate by the same procedure outlined in subsection (1) above.

(3) The rate for holiday or overtime work shall be those rates specified in the collective bargaining agreement when the basic hourly rate is based on a collective bargaining agreement rate. In the event the basic hourly rate is not based on a collective bargaining agreement, holidays and overtime (if any) included with the prevailing basic hourly rate of pay shall be prevailing. Public Entity. For the purpose of processing requests for inspection of payroll records or furnishing certified copies thereof, "public entity" includes: the body awarding the contracts; the Division of Apprenticeship Standards (DAS), or the Division of Labor Standards Enforcement (DLSE).

Public Funds. Includes state, local and/or federal monies.

Note: Public funds do not include money loaned to a private entity where work is to be performed under private contract, and where no portion of the work is supervised, owned, utilized, or managed by an awarding body.

Public Works. See Sections 1720, 1720.2, 1720.3, and 1771 of the Labor Code.

Service upon a Contractor or Subcontractor. This is the process defined in Title 8, California Code of Regulations, (CCR) Section 16801(a)(2)(A).

Serve upon the Labor Commissioner. Delivery of all documents including legal process to the Headquarters of the Labor Commissioner.

Sheltered workshop. A nonprofit organization licensed by the Chief of DLSE employing mentally and/or physically handicapped workers.

Wage Survey. An investigation conducted pursuant to Labor Code Sections 1773 and/or 1773.4 to determine the general prevailing rate of per diem wages for the crafts/classifications in the county(ies) for which the survey questionnaire was designed.

Willful. See Labor Code Section 1777.1(d).

Worker. See Labor Code Sections 1723 and 1772.

NOTE: Authority cited: Section 1773.5, Labor Code. Reference: Sections 1191.5, 1720, 1720.2, 1720.3, 1721, 1722, 1722.1, 1723, 1724, 1770, 1771, 1772, 1773.5, 1776, 2750.5, 3071 and 3093, Labor Code; and Section 21002, Public Contract Code.

HISTORY

1. Repealer of group 3 (articles 1-3, sections 16000-16004, 16100-16101 and 16200-16205) and new group 3 (articles 1-4, sections 16000-16013, 16100-16109, 16200-16206 and 16300-16305) filed 1-3-77 as an emergency; effective upon filing (Register 77, No 2). For prior history, see Register 56, No. 8.
2. New group 3 (sections 16000-16014, 16100-16109, 16200-16207.9) filed 2-8-78; effective thirtieth day thereafter (Register 78, No. 6).
3. Renumbering and amendment of former sections 16000-16006 and 16008-16019 to section 16000; renumbering and amendment of former section 16100 to section 16002; renumbering and amendment of former section 16101 to section 16203; renumbering and amendment of former sections 16102-16105 to section 16200; renumbering and amendment of former section 16106 to section 16206; renumbering and amendment of former sections 16107(a), (b) and (c) to sections 16201, 16202 and 16205; renumbering and amendment of former section 16108 to section 16204; renumbering and amendment of former section 16200 to section 16300; renumbering and amendment of former sections 16007, 16201, 16202, 16204 and 16206 to section 16302; renumbering and amendment of former section 16207 to section 16303; renumbering and amendment of former sections 16207.2 and 16207.3 to section 16304; renumbering and amendment of former section 16207.5 to section 16100; renumbering and amendment of former section 16207.7 to section 16301; renumbering and amendment of former sections 16207.10-16207.14 to section 16400; renumbering and amendment of former sections 16207.15 and 16207.16 to section 16401; renumbering and amendment of former section 16207.17 to section 16402; renumbering and amendment of former section 16207.18 to section 16403; renumbering and amendment of former section 16207.19 to section 16500; repealer of former sections 16100.1, 16109, 16203, 16205, 16207.1, 16207.4, 16207.6 and 16207.8; and new sections 16001, 16101 and 16102 filed 2-11-86; effective thirtieth day thereafter (Register 86, No. 7). For prior history, see Registers 82, No. 51; 80, No. 6; 79, No. 19; 72, No. 23 and 72, No. 13.
4. Amendment filed 2-20-92; operative 3-23-92 (Register 92, No. 13).
5. Repealer of definition of "Predetermined Changes" filed 12-27-96; operative 1-26-97 (Register 96, No. 52).
6. Amendment of definition of "Prevailing Rate" filed 12-27-96; operative 1-26-97 (Register 96, No. 52).
7. Change without regulatory effect restoring definition of "Predetermined Changes" and repealing amendments to definition of "Prevailing Rate" filed 2-19-99 (Register 99, No. 8). Pursuant to Sacramento Superior Court Order Issued 6-4-97 in Case 97CS 00471 the amendments filed 12-27-96 and effective 1-27-97 were invalidated and the prior regulations were reinstated.

§16001. Public Works Subject to Prevailing Wage Law.

(a) General Coverage. State prevailing wage rates apply to all public works contracts as set forth in Labor Code Sections 1720, 1720.2, 1720.3, 1720.4, and 1771.

(1) Any interested party enumerated in Section 16000 of these regulations may file with the Director of Industrial Relations or the Director's duly authorized representative, as set forth in Section 16301 of these regulations, a request to determine coverage under the prevailing wage laws regarding either a specific project or type of work to be performed which that interested party believes may be subject to or excluded from coverage as public works under the Labor Code. If such a request is filed by any party other than the awarding body, a copy of the request must be served upon the awarding body, in accordance with the filing procedures set forth in Section 16302(d) of these regulations, when it is filed with the Director.

(2) Within 15 days of receipt of a copy of the request for a coverage determination, the awarding body shall forward to the Director or his/her duly authorized representative as provided for in Section 16301 of these regulations, any documents, arguments, or authorities it wishes to have considered in the coverage determination process.

(3) All parties to the coverage determination request shall have a continuing duty to provide the Director or his/her duly authorized representative as provided for in Section 16301 of these regulations, with relevant documents in their possession or control, until a determination is made. Where any party or parties' agent has a document in their possession, but refuses to release a copy, the Department shall consider that the documents, if released, would contain information adverse to the withholding party's position and may

close the record and render a decision on the basis of that inference and the information received.

(b) Federally Funded or Assisted Projects. The application of state prevailing wage rates when higher is required whenever federally funded or assisted projects are controlled or carried out by California awarding bodies of any sort.

(c) Field Surveying Projects. Field survey work traditionally covered by collective bargaining agreements is subject to prevailing wage rates when it is integral to the specific public works project in the design, preconstruction, or construction phase.

(d) Residential Projects. Residential projects consisting of single family homes and apartments up to and including four stories are subject to payment of prevailing wages when paid for in whole or in part out of public funds, including federally-funded or assisted residential projects controlled or carried out by an awarding body.

Note: Such projects may require a special determination by the Director which should be requested by the awarding body at least 45 days before the commencement of advertising of the call for bids by the awarding body.

(e) Commercial Projects. All non-residential construction projects including new work, additions, alterations, reconstruction and repairs. Includes residential projects over four stories.

(f) Maintenance. Public works contracts for maintenance are subject to prevailing wage rate payment as set forth in Section 1771 of the Labor Code.

Note: See Article 1 for definition of term "maintenance."

NOTE: Authority cited: Section 1773.5, Labor Code. Reference: Sections 1720, 1720.2, 1720.3, 1720.4 and 1771, Labor Code.

HISTORY
1. Amendment of subsection (a) and NOTE and adoption of subsections (a)(1)-(3) and (e) and relettering former subsection (e) to (f) filed 2-20-92; operative 3-23-92 (Register 92, No. 13).

2. Amendment of subsection (b) and (d) and Note filed 12-27-96; operative 1-26-97 (Register 96, No. 52).

3. Change without regulatory effect repealing amendments to subsections (b) and (d) and Note filed 2-19-99 (Register 99, No. 8). Pursuant to Sacramento Superior Court Order Issued 6-4-97 in Case 97CS 00471 the amendments filed 12-27-96 and effective 1-27-97 were invalidated and the prior regulations were reinstated.

§16002. Coverage of Worker.

The determinations of the Director will cover those crafts, classifications or types of workers employed in public works as set forth in Sections 1720, 1720.2, 1720.3, and 1771 of the Labor Code.

NOTE: Authority cited: Sections 1723 and 1773.5, Labor Code. Reference: Sections 1720, 1720.2, 1720.3 and 1771, Labor Code.

§16002.5. Appeal of Public Work Coverage Determination.

(a) Those interested parties enumerated in Section 16000 of these regulations may appeal to the Director of Industrial Relations or the Director's duly authorized representative as set forth in Section 16301 of these regulations a determination of coverage under the public works laws (Labor Code Section 1720 et seq.) regarding either a specific project or type of work under Section 16001(a) of these regulations. Such notice of appeal must be served within 30 days of the issuance of the coverage determination. The party appealing the determination must, in accordance with the filing procedures set forth in Section 16302(d) of these regulations, give written notification to the awarding body and any other identifiable parties.
(b) The notice of appeal shall state the full factual and legal grounds upon which the determination is appealed, and whether a hearing is desired. The decision to hold a hearing is within the Director's sole discretion. The Director may appoint a hearing officer to conduct the hearing and propose a decision on the appeal. The Director shall make the final decision on the appeal.
(c) The authority of the Director to determine coverage of projects under the prevailing wage laws is quasi-legislative, and a final determination on any appeal is subject to judicial review pursuant to the Code of Civil Procedure, Section 1085.
NOTE: Authority cited: Section 1773.5, Labor Code. Reference: Sections 1720, 1720.2, 1720.3, 1720.4 and 1771, Labor Code.

HISTORY
1. New section filed 2-20-92; operative 3-23-92 (Register 92, No. 13).

§16003. Requests for Approval of Volunteer Labor.

(a) An awarding body wishing to use volunteer labor on what would otherwise be a public works project, pursuant to Labor Code Section 1720.4 shall serve a written request for approval on the Director, not less than 45 days prior to the commencement of work on the facilities or structures.

(b) The request for approval shall fully set forth the awarding body's grounds for belief that the requirements of Labor Code Section 1720.4(a), (b), and (c) are satisfied, and shall list all the crafts and classifications of workers that typically perform the types of work needed for the project.
(c) The request for approval shall identify the unions which represent workers in the crafts or classifications listed in (b) within the locality in which the public work is performed.
NOTE: Authority cited: Sections 54 and 1773.5, Labor Code. Reference: Section 1720.4, Labor Code.
HISTORY
1. New section filed 2-20-92; operative 3-23-92 (Register 92, No. 13).

§16100. Duties, Responsibilities and Rights.

The parties listed in this section must comply with the provisions of the Labor Code applicable to the payment of prevailing wages on public works contracts.
(a) Department and Division Authority in Prevailing Wage Issues. The Director shall establish and coordinate the administration of the State's prevailing wage law, including the determination of coverage issues. The lead agency for the determination of prevailing wage rates shall be the Division of Labor Statistics and Research. The lead agency for the enforcement of the payment of prevailing wages is the Division of Labor Standards Enforcement. The lead agency for the coordination on apprenticeship is the Division of Apprenticeship Standards. This section shall not be construed to preclude any filing requirements with DLSR of appropriate agreements or petitions regarding determinations or any other documents, papers, books, etc. otherwise required by the law or these regulations.
(b) The Awarding Body shall:
(1) Obtain the prevailing wage rate from the Director in accordance with Labor Code Sections 1771 and 1773.
(2) Specify the appropriate prevailing wage rates, in accordance with Labor Code Sections 1773.2 and 1777.5.
(A) The posting requirement is applicable for each job site.
EXCEPTION: If more than one worksite exists on any project, then the applicable rates may be posted at a single location which is readily available to all workers.
(B) If a wage rate for a craft, classification or type of worker is not published in the Director's general prevailing wage determinations, a request for a special determination should be made by the awarding body to Chief, Division of Labor Statistics and Research, P.O. Box 420603, San Francisco, CA 94142, at least 45 days prior to the project bid advertisement date.
(3) Notify DAS. See Labor Code Section 1773.3.
(4) Inform prime contractors, to the extent feasible, of relevant public work requirements:
NOTE: Requirement information may be disseminated at a preacceptance of bid conference or in a call for bids or at an award of bid conference.
The public works requirements are:
(A) the appropriate number of apprentices are on the job site, as set forth in Labor Code Section 1777.5.
(B) worker's compensation coverage, as set forth in Labor Code Sections 1860 and 1861.
(C) keep accurate records of the work performed on the public works project, as set forth in Labor Code Section 1812.
(D) inspection of payroll records pursuant to Labor Code Section 1776, and as set forth in Section 16400 (e) of these regulations.
(E) and other requirements imposed by law.
(5) Withhold monies. See Labor Code Section 1727.
(6) Ensure that public works projects are not split or separated into smaller work orders or projects for the purpose of evading the applicable provisions of Labor Code Section 1771.
(7) Deny the right to bid on public work contracts to contractors or subcontractors who have violated public work laws, as set forth in Labor Code Section 1777.7.
(8) Not permit workers on public works to work more than eight hours a day or 40 hours in any one calendar week, unless compensated at not less than time and a half as set forth in Labor Code Section 1815.
EXCEPTION: If the prevailing wage determination requires a higher rate of pay for overtime work than is required under Labor Code Section 1815, then that higher overtime rate must be paid, as specified in subsection 16200(a)(3)(F) of these regulations.
(9) Not take or receive any portion of the workers' wages or accept a fee in connection with a public works project, as set forth in Labor Code Sections 1778 and 1779.
(10) Comply with those requirements as specified in Labor Code Sections 1776(g), 1777.5, 1810, 1813, and 1860.
(c) Contractor-subcontractor.
The contractor and subcontractor shall:
(1) Pay not less than the prevailing wage to all workers, as defined in Section 16000 of these regulations, and as set forth in Labor Code Sections 1771 and 1774;
(2) Comply with the provisions of Labor Code Sections 1773.5, 1775, and 1777.5 regarding public works jobsites;
(3) Provide workers' compensation coverage as set forth in Labor Code Section 1861;
(4) Comply with Labor Code Sections 1778 and 1779 regarding receiving a portion of wages or acceptance of a fee;
(5) Maintain and make available for inspection payroll records, as set forth in Labor Code Section 1776;
(6) Pay workers overtime pay, as set forth in Labor Code Section 1815 or as provided in the collective bargaining agreement adopted by the Director as set forth in Section 16200 (a) (3) of these regulations; and

(7) Comply with Section 16101 of these regulations regarding discrimination.
(8) Be subject to provisions of Labor Code Section 1777.7 which specifies the penalties imposed on a contractor who willfully fails to comply with provisions of Section 1777.5.
(9) Comply with those requirements as specified in Labor Code Sections 1810 and 1813.
(10) Comply with other requirements imposed by law.
NOTE: Authority cited: Section 1773.5, Labor Code. Reference: Sections 1720, 1720.2, 1720.3, 1726, 1727, 1728, 1729, 1770, 1771, 1773, 1773.2, 1773.3, 1773.4, 1773.5, 1774, 1775, 1776, 1777.5, 1777.7, 1778, 1779, 1810, 1811, 1812, 1813, 1815, 1860 and 1861, Labor Code.
HISTORY
1. Amendment of subsection (b)(2)(B) filed 2-20-92; operative 3-23-92 (Register 92, No. 13).

§16101. Discrimination.

See Labor Code Sections 1735, 1777.5, 1777.6, and 3077.5.
NOTE: Authority cited: Section 1773.5, Labor Code. Reference: Sections 1735, 1777.5, 1777.6 and 3077.5, Labor Code.

§16102. Interested Party.

An interested party, as defined in Section 16000 of these regulations, may be a source of wage data information, as provided in Section 16200(e) of these regulations.
NOTE: Authority cited: Section 1773.5, Labor Code. Reference: Section 1773.4, Labor Code.

§16200. General. Basis for Determining Prevailing Wage Rate.

The Director shall follow those procedures specified in Sections 1773 and 1777.5 of the Labor Code and in these regulations when making a prevailing wage determination.

(a) Collective Bargaining Agreements or Wage Surveys.

(1) Filing of collective bargaining agreements.

(A) To enable the Director to ascertain and consider the applicable wage rates established by collective bargaining agreements when making prevailing wage determinations, the representatives of any crafts, classifications, or types of workers needed to execute any public works contracts shall file with the Department of Industrial Relations fully executed copies of all their collective bargaining agreements, including any and all addenda which modify the agreements, within 10 days of their execution and shall be considered as the basis for a prevailing wage determination whenever on file 30 days before the call for bids on a project.

(B) Copies of collective bargaining agreements filed with the Department of Industrial Relations pursuant to Sections 1773.1 and 1773.8 of the Labor Code, and Section 16200(a)(1)(A) of these regulations shall be addressed to: Chief, Division of Labor Statistics and Research, P.O. Box 420603, San Francisco, CA 94142.

(C) Collective bargaining agreements filed with the Division of Labor Statistics and Research must be accompanied by a signed statement which is certified as true and correct to the best of the knowledge and belief of the person preparing the statement, under penalty of perjury, and which:

1. certifies that the agreement filed is fully executed and in effect, unless it is a signed original agreement or photocopy thereof, or a printed copy of a fully executed agreement showing the names of the signatory parties, except in the case of a printed agreement the Director may require certification;

2. names or otherwise identifies all California counties within the jurisdiction of the local union or unions signatory to the agreement;

3. names and provides the address of the signatory employer association or, if there be no signatory employer association, provides the names and addresses of all contractors signatory to the agreement, unless such information is contained in the agreement;

4. provides the number of workers currently employed under the terms of the agreement and, if practicable, the number of workers in each county within the jurisdiction of the signatory local union or unions;

5. provides any other information not contained in the agreement that the Director may need to give proper consideration to applicable wage rates established by collective bargaining.

(D) Copies of collective bargaining agreements which are not bona fide shall not be deemed filed. The party filing a contract may be asked to substantiate the assertion that such collective bargaining agreement is bona fide.

(2) Criteria for using collective bargaining agreement wage rates as basis of prevailing wage determinations. Before accepting the collective bargaining agreement wage rate for the applicable craft and locality, DLSR shall take the following factors into consideration:

(A) The geographical area(s) specified in the agreement;

(B) The number of workers covered by the agreement;

(C) If signatory parties to the agreement have workers in the geographical area(s);

(D) If work has been performed in the geographical area(s) specified in the agreement in the past 12 months;

(E) The wage rates determined by the federal government as set forth in Section 16200(b).

(3) Adoption of Collective Bargaining Agreements.

(A) If the Director determines pursuant to Section 1773 of the Labor Code that the rate established by a collective bargaining agreement is the general prevailing rate of per diem wages for each craft, classification or type of worker and the Director adopts such rate by referral, the Director will publish such rate. Only those rates and employer payments specifically enumerated in the definition of "general prevailing rate of per diem wages" in Section 16000 shall be included in the rate adopted.

(B) When such rate is adopted, and in the case where the collective bargaining agreement contains definite and predetermined changes during its term which will affect the rate adopted, the Director shall incorporate such changes in the determination.

Note: A statement must be filed with the Director for any adjustments made to a contract which are not contained in the agreement currently on file with DLSR.

(C) When such rate is adopted, and in the case where the collective bargaining agreement contains changes during its term which will affect the rate adopted, which are not definite or predetermined, the changes shall not be adopted. The prior determination will remain in effect until a new determination is issued. Any interested party may request that the Director make a new determination when contract changes become definite and determined by filing a statement as set forth in Section 16200(a)(1). The statement must summarize the amounts and effective dates of any cost-of-living adjustments, allocations of interim wage increases to wages and employer payments, and other relevant changes which will affect the rate adopted by the Director. The statement must be signed by an officer or agent of the bargaining representative and certified, under penalty of perjury, as true and correct to the best of his or her knowledge and belief.

(D) When such agreement is adopted as the basis of the prevailing wage determination, all wage classifications may be considered.

(E) Holidays. Holidays specifically named in the collective bargaining agreement or determined by wage surveys shall be included in the wage determination. Overtime pay may be required as provided in Section 16200(a)(3)(F) of these regulations.

(F) Overtime. Overtime will be paid as indicated in the wage determination.

Exception 1: If a workweek other than Monday through Friday is a fixed business practice or is required by the awarding body, no overtime payment is required for the first eight hours on Saturday or Sunday.

Exception 2: If the collective bargaining agreement provides for Saturday and Sunday work at straight-time, no overtime payment is required for the first eight hours on Saturday or Sunday.

Exception 3: If the awarding body determines that work cannot be performed during normal business hours or work is necessary at off hours to avoid danger to life or property, no overtime is required for the first eight hours in any one calendar day, and 40 hours during any one calendar week.

Exception 4: No overtime payment is required for less than 40 hours in a standard work week or for less than eight hours in a calendar workday unless specified in the collective bargaining agreement used as the basis for the prevailing wage determination.

(G) Wage rates, training contributions and apprenticeship contributions. Apprenticeship rates shall be determined by the Director of Industrial Relations using apprentice wage standards set forth in the collective bargaining agreement and/or approved by the California Apprenticeship Council. A contractor or subcontractor on a public works contract must pay training fund contributions or apprenticeship contributions in one of the following manners:

1. into the appropriate craft apprenticeship program in the area of the site of the public work; or

2. (if the trust fund is unable to accept such contributions) an equivalent amount shall be paid to the California Apprenticeship Council (CAC) administered by DAS.

3. If neither of the above will accept the funds, cash pay shall be as provided for in Section 16200(a)(3)(I) of these regulations.

(H) Rates for helpers. Rates for helpers will be published when the information available to the Director indicates that a practice of using such a subclassification prevails in a particular area, such as contained in a collective bargaining agreement, and within the parameters of the applicable collective bargaining agreement. In the absence of such determination, the helper classification may not be used as a substitute for a journeyman or apprentice.

This section does not exempt the contractor from the 1-5 apprentice-journeyman ratio requirements set forth in Labor Code Section 1777.5.

(l) Credit Available For Actual Payment of Fringe Benefit Costs up to the Prevailing Amount. The contractor obligated to pay the full prevailing rate of per diem wages may take credit for amounts up to the total of all fringe benefit amounts listed as prevailing in the appropriate wage determination. This credit may be taken only as to amounts which are actual payments under Employer Payments Section 16000(1)-(3). In the event the total of Employer Payments by a contractor for the fringe benefits listed as prevailing is less than the aggregate amount set out as prevailing in the wage determination, the contractor must pay the difference directly to the employee. No amount of credit for payments over the aggregate amount of employer payments shall be taken nor shall any credit decrease the amount of direct payment of hourly wages of those amounts found to be prevailing for straight time or overtime wages.

(b) Federal Rates. In reviewing rates predetermined for federal public works, the Director will consider those rates published pursuant to the Davis-Bacon Act.

(c) Data collection shall be in accordance with Labor Code Section 1773.

(d) Wage rate factors.

Note: Wage surveys are conducted by DLSR.

(1) The following factors shall be considered:

(A) Type of work to be performed;

(B) Classification(s) of worker(s) needed;

(C) Geographical area of project;

(D) Nearest labor market area;

(E) If work has been performed in the geographical area in the past 12 months.

(F) Mobility of craft, classification, or type of worker needed for project;

(G) Number of workers in craft or job classification;

(H) Normal industry practice in selection of craft and classification of worker;

(I) Size (dollar amount) of project;

(J) Degree of project's remoteness from survey area.

(2) Time period used in determining prevailing wage by survey. The time period reference for establishing the prevailing wage in the area of determination shall be the 12-month period prior to the request for a wage determination unless another time period is necessary. In such cases, the Director shall establish the appropriate time period.

(e) Other information. Pursuant to Section 1773 of the Labor Code, the Director may also obtain and consider other data from interested parties, and shall give consideration to data submitted by any interested party, concerning rates actually paid on public or private projects under construction or recently completed in the locality and in the nearest labor market area. Such data may be obtained by holding a hearing, instituting an investigation, or by such other means as the Director determines will best serve the purposes of the law. Information submitted by interested parties for the Director's consideration shall include, but not be limited to the following for each project:

(1) the name, address, job title, and telephone number of the interested party submitting the information and the basis for qualification as an interested party under Section 16102;

(2) the basic hourly wage rate, overtime and holiday pay rates, and employer payments as enumerated in Section 16000 of these regulations for each classification in question as effective for the last payroll period, or most recent payroll period, for which payments based on such rates were actually made;

(3) the number of workers employed on the project in each classification in question during the payroll period for which data is submitted;

(4) the location of the project;

(5) the name and address of the contractor or subcontractor making the payments, and of all other contractors or subcontractors on the project;

(6) the type of construction (e.g. residential, commercial building, etc.);

(7) the approximate cost of construction;

(8) the beginning date and completion date, or estimated completion date of the project;

(9) the source of data (e.g. "payroll records");

(10) the method of selection of the projects for which data is submitted, when data is not submitted for all projects recently completed or in progress in the locality or in the nearest labor market area.

NOTE: Authority cited: Sections 1773 and 1773.5, Labor Code. Reference: Sections 1770, 1771, 1773,

1773.1, 1773.5, 1773.8, 1777.5, 1810 and 1815, Labor Code.

HISTORY
1. Order of Repeal of subsection (a)(3)(E) filed 8-24-88 by OAL pursuant to Government Code section 11340.15 (Register 88, No. 35).

2. Amendment of subsections (a)(1), (a)(3) and (b) filed 2-20-92; operative 3-23-92 (Register 92, No. 13).

3. Repealer of subsection (a)(3)(B), subsection relettering, and amendment of newly designated subsections (a)(3)(B), (a)(3)(D), and (a)(3)(F)(3) filed 12-27-96; operative 1-26-97 (Register 96, No. 52).

4. Amendment of subsection (b) filed 12-27-96; operative 1-26-97 (Register 96, No. 52).

5. Change without regulatory effect repealing 12-27-96 amendments filed 2-19-99 (Register 99, No. 8). Pursuant to Sacramento Superior Court Order Issued 6-4-97 in Case 97CS 00471 the amendments filed 12-27-96 and effective 1-27-97 were invalidated and the prior regulations were reinstated.

§16201. General Area Determinations.

When the Director determines that the general prevailing rate of per diem wages for a particular craft, classification, or type of worker is uniform throughout an area, the Director shall issue a determination enumerated county by county, but covering the entire area. Such determinations will ordinarily be made for an entire county or group of counties and shall constitute the Director's determination for all localities in which public work is performed within that county or counties except as the geographic application of the determination may be specifically limited by the determination itself.
NOTE: General determinations are usually issued on a quarterly basis. However, the Director may issue an interim wage determination following the procedures set forth in Section 1773 of the Labor Code, and in these regulations. See Section 16000 as to issue date, and Section 16204 as to effective date of determination. The general determination usually applies where a collective bargaining agreement has been filed and adopted as the prevailing wage rate.
NOTE: Authority cited: Sections 1773.5 and 1773.6, Labor Code. Reference: Section 1773, Labor Code.

§16202. Special Determinations.

(a) Awarding body request. The awarding body shall request the Director to make a determination for a particular craft, classification or type of worker not covered by a general determination. Any such request shall be submitted at least 45 days prior to the bid advertisement date.
(b) Department of Industrial Relations initiated determination. Where an awarding body does not specify the prevailing wage rate as set forth in Labor Code Section 1773.2, any interested party (as defined in Section 16000 of these regulations) may petition the Director as set forth in Labor Code Section 1773.4 and Section 16302 of these regulations. The Labor Commissioner may, prior to the letting of the bid, request such a determination of the Director.
NOTE: Authority cited: Section 1773.5, Labor Code. Reference: Sections 1770, 1773 and 1773.4, Labor Code.

§16203. Format.

(a) All determinations made by the Director of the general prevailing rate of per diem wages for a particular craft, classification, or type of worker will separately specify each of the following components:
(1) The prevailing basic straight-time hourly wage rate.
(2) The following statement when applicable: "In accordance with Labor Code Section 1773, holidays upon which the prevailing hourly wage rate for holiday work shall be paid shall be all holidays recognized in the collective bargaining agreement applicable to the particular craft, classification or type of workers employed on the project, which is on file with the Director of Industrial Relations."
(3) The prevailing employer payments for benefits included in the general prevailing rate of per diem wages pursuant to Section 1773.1 of the Labor Code and enumerated in Section 16000 of these regulations.
(4) The following statement when applicable. "The contractor shall make travel and subsistence payments to each worker needed to execute the work, as such travel and subsistence payments are defined in the applicable collective bargaining agreements filed with the Director of Industrial Relations in accordance with Labor Code Section 1773.8."
(b) Where the prevailing employer payment for any benefit is expressed in a formula or method of payment other than an hourly rate the Director may convert the rate to an hourly rate whenever such action would facilitate the administration of the law.
(c) The applicability of the apprentice rate of per diem wages shall be indicated and furnished upon request.
(d) The dates between which the applicable rate shall be paid for work performed in those periods shall be indicated.
(e) As a supplement to each determination the Director shall make available to any awarding body upon request, a list of all holidays recognized and the provision for travel and subsistence payments, taken from the applicable collective bargaining agreement.
NOTE: Authority cited: Section 1773.5, Labor Code. Reference: Section 1773.5, Labor Code.

§16204. Effective Dates of Determination and of Rates Within Determination.

(a) Effective Date of Determination.

(1) All determinations issued will be effective ten (10) days after issuance, provided that requests for copies, reprints or reissuance of prior determinations shall not affect the original effective date unless a new effective date is reflected upon the determination (see subdivision (3) below). Any call for bids put out on or after the effective date of the determination must reflect that determination unless the Director determines that subdivision (4) of this section is applicable, after notification and request by an awarding body.

(2) Determinations issued by the Director will show an issue date and will ordinarily show an expiration date.

(3) All determinations will remain in effect until their expiration date or until modified, corrected, rescinded or superseded by the Director.

(4) Determinations modified, corrected, rescinded or superseded on the basis of information contained in copies of collective bargaining agreements filed with the Department shall not be effective as to any project in which a call for bids takes place less than 30 days after the filing of the agreement.

Note: See Section 1773.1 of the Labor Code.

(5) It shall be the responsibility of the awarding body to ensure that the correct determination is used.

(b) Modification of Effective Date of Determination by Asterisks. Meaning of single and double asterisks. Prevailing wage determinations with a single asterisk (*) after the expiration date which are in effect on the date of advertisement for bids remain in effect for the life of the project. Prevailing wage determinations with double asterisks (**) after the expiration date indicate that the basic hourly wage rate, overtime and holiday pay rates, and employer payments to be paid for work performed after this date have been predetermined. If work is to extend past this date, the new rate must be paid and should be incorporated in contracts entered into now. The contractor should contact the Prevailing Wage Unit, DLSR, or the awarding body to obtain predetermined wage changes. All determinations that do not have double asterisks (**) after the expiration date remain in effect for the life of the project.

NOTE: Authority cited: Section 1773.5, Labor Code. Reference: Sections 1770, 1773 and 1773.1, Labor Code.

HISTORY
1. Amendment of subsections (a)(3) and (b) filed 2-20-92; operative 3-23-92 (Register 92, No. 13).

2. Amendment of subsection (a)(3), repealer and new subsection (b) and amendment of Note filed 12-27-96; operative 1-26-97 (Register 96, No. 52).

3. Change without regulatory effect repealing 12-27-96 amendments to section and Note filed 2-19-99 (Register 99, No. 8). Pursuant to Sacramento Superior Court Order Issued 6-4-97 in Case 97CS 00471 the amendments filed 12-27-96 and effective 1-27-97 were invalidated and the prior regulations were reinstated.

§16205. Procedures for Obtaining Prevailing Wage Determinations.

An awarding body may request to be put on a mailing list for all area wage determinations for a specific county or counties or may request that a special or general prevailing wage determination be furnished when needed, by writing to Chief, Division of Labor Statistics and Research, P.O. Box 420603, San Francisco, CA 94142. All requests for special prevailing wage determinations must be confirmed in writing and must specify the location where the public work is to be performed, including the county and the particular crafts, classifications, or types of workers for which a determination is needed.
NOTE: Authority cited: Section 1773.5, Labor Code. Reference: Sections 1770 and 1773, Labor Code.
HISTORY
1. Amendment filed 2-20-92; operative 3-23-92 (Register 92, No. 13).

§16206. Corrections.

Upon his or her own initiative or at the request of any interested party, the Director shall correct any error in a published determination that is the result of clerical error, such as a typographical error or a transposition of letters or digits, by issuing a corrected determination or a modification of the determination. The Director may correct any error issued in a determination by reissuing such determination.
NOTE: Authority cited: Section 1773.5, Labor Code. Reference: Sections 1770 and 1773, Labor Code.

§16300. Delegation of Authority.

(a) The Chief of DLSR is the authorized representative of the Director for the purpose of:
(1) Receiving collective bargaining agreements and other documents and papers pertaining to making prevailing wage determinations under Part 7, Chapter 1, Article 2 of the Labor Code and these regulations;
(2) Gathering information needed to make prevailing wage determinations under Part 7, Chapter 1, Article 2 of the Labor Code and these regulations, and may for that purpose institute investigations, conduct hearings, or employ such other means as shall best serve the purpose of the law;

(3) Issuing prevailing wage determinations under Part 7, Chapter 1, Article 2 of the Labor Code and these regulations; and
(4) Responding to petitions regarding determinations.
(b) The Director reserves the right to make all final determinations.
NOTE: Authority cited: Section 1773.5, Labor Code. Reference: Sections 1770, 1771, 1772, 1773 et seq., 1774, 1775, 1776, 1777, 1777.5 et seq., 1778, 1779 and 1780, Labor Code.

§16301. Referral of Prevailing Wage Issues to Director's Office.

Any new or unresolved issue other than of a routine nature as to coverage of or amount of the prevailing wage raised by an awarding body or other interested party may be referred to the Chief of DLSR as the Director's duly authorized representative for final determination, including appeals of any determination relating either to coverage or to the rate of the prevailing wage rate, subject only to Section 16300(b) of these regulations.
NOTE: Authority cited: Section 1773.5, Labor Code. Reference: Section 1773.4, Labor Code.

§16302. Petition to Review Prevailing Wage Determinations.

Those interested parties enumerated in Section 1773.4 of the Labor Code, and defined in Section 16000 of these regulations, may file with the Director or the Chief of DLSR, within 20 days after commencement of advertising of a call for bids by any awarding body, a petition to review a determination of any rate or rates made by the Director, pursuant to Section 1773 of the Labor Code, which is specified in or referred to in the call for bids.
(a) Manner of Filing. Every petition filed pursuant to Section 1773.4 of the Labor Code shall be filed with the Director by mail to the Chief, Division of Labor Statistics and Research, P.O. Box 420603, San Francisco, CA 94142, or may be filed in person at 455 Golden Gate Avenue, 5th Floor, San Francisco, CA 94102.
(b) Filing. Where any paper, letter, petition, or document is required or permitted to be filed pursuant to these regulations or pursuant to the prevailing wage provisions of the Labor Code, it shall be deemed filed with any person, awarding body or division upon actual delivery to and receipt by such person, awarding body, or division.
(c) Content of Petition. Every petition filed pursuant to Section 1773.4 of the Labor Code shall contain and separately state the following:
(1) The name, address, telephone number and job title of:
(A) the person filing the petition;
(B) the person verifying the petition, if different from the person filing;
(C) if applicable, petitioner's attorney or authorized representative.
(2) Whether the petitioner is an awarding body, a prospective bidder, or the representative of one or more crafts, classifications or types of workers involved in the public works contract;
(3) The nature of petitioner's business, if a prospective bidder, and a designation of each craft, classification, or type of worker represented, or types of workers involved in the public works project.
(4) (A) the official name of the awarding body;
(B) the date on which the call for bids was first published;
(C) the name and location of the newspaper in which such publication was made. An accurate copy of the call for bids as published shall be attached to the petition.
(5) If petitioner is an awarding body which is a department, board, authority or political subdivision other than a county, city and county, city, township, or regional district, the awarding body shall describe the parent or principal organization of which it is a part, and shall specify the statutory authority for undertaking public works.
(6) If the petitioner is a prospective bidder, then the parent or subsidiary corporations or associations related to such craft, classification or type of work, if any, shall be specified.
(7) The manner in which the wage rate determined by the Director fails to comply with the provisions of Labor Code Section 1773.
(A) Every petition asserting that the applicable prevailing rate for one or more crafts, classifications or types of workers needed to execute a contract is different from that ascertained by the Director shall set forth the rate the petitioner claims to be correct for each disputed rate, together with specific reference to particular facts providing the basis for such claim.
1. Whenever such facts relate to a particular employer of such crafts, classifications, or types of workers, the facts stated must identify the employer by name and address and give the number of workers involved.
2. Whenever such facts relate to an applicable collective bargaining agreement which the petitioner alleges was not considered by the Director pursuant to Section 1773 of the Labor Code, a copy of the agreement, if not already filed with the Director, should be filed concurrently with the petition in the manner provided in Section 16200(a)(1) of these regulations.
3. Whenever such facts relate to rates actually paid on public or private projects under construction or recently completed in the locality and in the nearest labor market area, the facts stated should include all of the items of information enumerated in Section 16200(e) of these regulations.
(B) Every petition asserting that the Director has failed to ascertain and consider all applicable rates required to be considered by it shall specifically state in the petition which rates have not been considered by the Director.
(C) Where rates ascertained by the Director are the same as the applicable rates established by the collective bargaining agreement and rates of pay

determined for federal public works within the locality and the nearest labor market area where the public work is performed, the petition shall specifically describe the manner and extent to which such rates do not constitute the rates actually prevailing in the locality where the public work is to be performed, and shall set forth and fully identify the existence of any rates asserted by petitioner to be prevailing in the locality and relied upon in support of the petition.
(d) Filing Copy With Awarding Body. If the petitioner is not an awarding body, the petitioner may concurrently with the filing of the original petition, or otherwise shall within two days thereafter, excluding Saturdays, Sundays and holidays, file a copy of the petition with the awarding body and not later than five days, excluding Saturdays, Sundays and holidays, after the filing of the original petition, the petitioner shall file with the Chief of DLSR an affidavit of the filing with the awarding body. The Director may waive this requirement upon receipt of written confirmation, including a copy of such notification by the petitioner.
NOTE: Authority cited: Section 1773.5, Labor Code. Reference: Sections 1773, 1773.1, 1773.4, 1773.5, 1773.8 and 1776, Labor Code.
HISTORY
1. Amendment of subsection (a) filed 2-20-92; operative 3-23-92 (Register 92, No. 13).

§16303. Quasi-Legislative Nature of Authority.

(a) The authority of the Director to establish the prevailing wage for any craft, classification, or type of worker is quasi-legislative. The Director has the discretion to establish these prevailing wages in a quasi-legislative manner which may include an investigation, hearing, or other action. Any hearing under this process is quasi-legislative and is subject to review pursuant to the Code of Civil Procedure Section 1085.
(b) The Director may in his or her discretion initiate an investigation or hold a hearing or take such other action as is reasonably necessary which would best effectuate the purposes of the law and of these regulations, except as such action may be expressly prohibited by law.
NOTE: Authority cited: Section 1773.5, Labor Code; and Winzler & Kelly (1981) 121 C.A. 3d 120; Western Assn. of Engineers & Land Surveyors v. DIR, Judicial Council Coord. Proceeding No. 449, Sac. Superior Court No. 285433. Reference: Sections 1770, 1773 and 1773.4, Labor Code; and Section 1085, Code of Civil Procedure.

§16304. Hearings.

When a hearing is held, including a petition to review under Labor Code Section 1773.4, it shall be in accordance with the following procedures:
(a) Hearing Procedures.
(1) A time and place of the hearing shall be fixed.
(2) All interested parties made known to the Director shall be notified by registered or certified mail, return receipt requested, of the time and place of the hearing except that, in the event of numerous interested parties or in the event that mailing notices by registered or certified mail could cause an undue delay adverse to the interest of the parties or a timely hearing, the Director may send certified or registered notices to the petitioner and other directly interested parties that have been made known to the Director and mail notices to the other parties, and publish such notices in newspapers.
(3) Notification of the time and place of the hearing shall be at least one week in advance.
(4) The interested parties shall be given an opportunity to present evidence and oral or written arguments in support of their positions. The hearing officer may fairly allocate time for such witnesses' testimony in the interest of introducing relevant evidence. Cross examination will be permitted at the discretion of the hearing officer.
(5) The hearing need not be conducted according to technical rules relating to evidence and witnesses.
(6) All witnesses testifying before the hearing officer shall testify under oath.
(7) A full transcript of the hearing shall be recorded.
(b) Hearing Officer. The Director may appoint a hearing officer(s). The appointed hearing officer(s) shall conduct the hearing and submit to the Director the entire record of the hearing together with written recommendations. Either the appointed hearing officer(s) or the Director may request documentation subsequent to the hearing to complete the record, and shall send copies of such additional information to the petitioner, awarding body or other designated interested party or parties.
(c) Subject Matter. The subject matter of a hearing may be initiated by a petition to review, as set forth in Labor Code Section 1773.4.
(d) Decision. The decision of the Director shall reflect a summary of the evidence, findings, or matters of fact and/or law.
The decision shall be sent to all parties no later than 20 days after the hearing, except earlier or later as special circumstances warrant. The decision of the Director shall be final, for the purposes of judicial review, except that the Director upon his or her initiative only, may consider and take whatever action is appropriate or necessary to facilitate a decision on reconsideration. Notice of reconsideration shall be given to all parties in the same manner as the notice of hearings as specified in Sections 16304(a)(2) and (a)(3) above and the decision upon reconsideration shall be as specified in subdivisions (a)(2) and (a)(3) of this section.
NOTE: Authority cited: Section 1773.5, Labor Code. Reference: Sections 1773.4 and 1773.5, Labor Code.

§16400. Request for Payroll Records.

(a) Requests may be made by any person for certified copies of payroll records. Requests shall be made to any of the following:
(1) the body awarding the contract, or

(2) any office of the Division of Labor Standards Enforcement, or the Division of Apprenticeship Standards.
(b) Requests for certified copies of payroll records pursuant to Section 1776 of the Labor Code may be made by any person. However, any such request shall be in writing and contain at least the following information:
(1) The body awarding the contract;
(2) The contract number and/or description;
(3) The particular job location if more than one;
(4) The name of the contractor;
(5) The regular business address, if known.
NOTE: Requests for records of more than one contractor of subcontractor must list the information regarding that contractor individually, even if all requests pertain to the same particular public works project. Blanket requests covering an entire public works project will not be accepted; unless contractor and subcontractor responsibilities regarding the project are not clearly defined.
(c) Acknowledgment of Request. The public entity receiving a request for payroll records shall acknowledge receipt of such, and indicate the cost of providing the payroll records based on an estimate by the contractor, subcontractor or public entity. The acknowledgment of the receipt of said request for payroll records may be accomplished by the public entity's furnishing a copy of its written correspondence requesting certified copies of the payroll records sent to the specific contractor pursuant to Section 16400(d) below, to the person who requested said records.
(d) Request to Contractor. The request for copies of payroll records by the requesting public entity shall be in any form and/or method which will assure and evidence receipt thereof. The request shall include the following:
(1) Specify the records to be provided and the form upon which the information is to be provided;
(2) Conspicuous notice of the following:
(A) that the person certifying the copies of the payroll records is, if not the contractor, considered as an agent acting on behalf of the contractor; and
(B) that failure to provide certified copies of the records to the requesting public entity within 10 working days of the receipt of the request will subject the contractor to a penalty of twenty-five ($25.00) dollars per calendar day or portion thereof for each worker until strict compliance is effectuated;
(3) Cost of preparation as provided in Section 16402; and
(4) Provide for inspection.
(e) Inspection of Payroll Records. Inspection of the original payroll records at the office of the contractor(s) pursuant to subdivision (b) of Section 1776 of the Labor Code shall be limited to the public entities upon reasonable written or oral notice.
NOTE: Authority cited: Sections 54, 1773.5 and 1776, Labor Code. Reference: Sections 1773.5 and 1776, Labor Code.

§16401. Reporting of Payroll Requests.

(a) Reporting Format. The format for reporting of payroll records requested pursuant to Labor Code Section 1776 shall be on a form provided by the public entity. Copies of the forms may be procured at any office of the Division of Labor Standards Enforcement (DLSE) throughout the state and/or:
Division of Labor Statistics & Research P.O. Box 420603 San Francisco, CA 94101
ATTENTION: Prevailing Wage Unit
Acceptance of any other format shall be conditioned upon the requirement that the alternate format contain all of the information required pursuant to Labor Code Section 1776. If, however, the contractor does not comply with the provisions of Labor Code Section 1776, the Labor Commissioner may require the use of DIR's suggested format, "Public Works Payroll Reporting Form" (Form A-1-131).
(b) Words of Certification. The form of certification shall be as follows: I, _____ (Name-print) the undersigned, am _____ (position in business) with the authority to act for and on behalf of _____, (name of business and/or contractor) certify under penalty of perjury that the records or copies thereof submitted and consisting of _____ (description, no. of pages) are the originals or true, full and correct copies of the originals which depict the payroll record(s) of the actual disbursements by way of cash, check, or whatever form to the individual or individuals named.
Date:_____
Signature:_____
A public entity may require a more strict and/or more extensive form of certification.
NOTE: Authority cited: Sections 54 and 1773.5, Labor Code. Reference: Section 1776, Labor Code.

§16402. Cost.

The cost of preparation to each contractor, subcontractor, or public entity when the request was made shall be provided in advance by the person seeking the payroll record. Such cost shall be $1 for the first page of the payroll record and 25 cents for each page thereafter, plus $10 to the contractor or subcontractor for handling costs. Payment in the form of cash, check or certified money order shall be made prior to release of the documents to cover the actual costs of preparation.
NOTE: Authority cited: Section 1776, Labor Code. Reference: Section 1776(h), Labor Code.

§16403. Privacy Considerations.

(a) Records received from the employing contractor shall be kept on file in the office or entity that processed the request for at least 6 months following completion and acceptance of the project. Thereafter, they may be destroyed unless administrative, judicial or other pending litigation, including arbitration, mediation or other methods of dispute resolution, are

in process. Copies on file shall not be obliterated in the manner prescribed in subdivision (b) below;
(b) copies provided to the public upon written request shall be marked, obliterated or provided in such a manner that the name, address and Social Security number, and other private information pertaining to each employee cannot be identified. All other information including identification of the contractor shall not be obliterated;
(c) the public entity may affirm or deny that a person(s) was or is employed on a public works contract (by a specific contractor) when asked, so long as the entity requires such information of an identifying nature which will reasonably preclude release of private or confidential information.
NOTE: Authority cited: Sections 54, 1773.5 and 1776, Labor Code. Reference: Section 1776, Labor Code.

§16410. Definitions.

As used in these regulations, the terms "awarding body," "contractor," and "subcontractor" shall have the same meaning as in Part 7 of Division 2 of the Labor Code. The term "affected subcontractor" shall mean a subcontractor whose alleged failure to pay the prevailing wage or to otherwise comply with the provisions of Labor Code §§ 1720-1815 resulted in the withholding of funds pursuant to Labor Code § 1727.
NOTE
Authority cited: Section 1773.5, Labor Code. Reference: Sections 1727, 1730, 1731, 1732, 1733, 1775, 1776(g) and 1813, Labor Code.
HISTORY
1. New article 7 (sections 16410-16414) and section filed 2-16-99 as an emergency; operative 2-16-99 (Register 99, No. 8). A Certificate of Compliance must be transmitted to OAL by 6-16-99 or emergency language will be repealed by operation of law on the following day.
2. New article 7 (sections 16410-16414) and section refiled 6-14-99 as an emergency; operative 6-14-99 (Register 99, No. 25). A Certificate of Compliance must be transmitted to OAL by 10-12-99 or emergency language will be repealed by operation of law on the following day.
3. New article 7 (sections 16410-16414) and section refiled 10-4-99 as an emergency; operative 10-4-99 (Register 99, No. 41). A Certificate of Compliance must be transmitted to OAL by 2-1-2000 or emergency language will be repealed by operation of law on the following day.
4. New article 7 (sections 16410-16414) and section refiled 1-20-2000 as an emergency; operative 2-2-2000 (Register 2000, No. 3). A Certificate of Compliance must be transmitted to OAL by 6-1-2000 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 1-20-2000 order transmitted to OAL 3-29-2000 and filed 5-4-2000 (Register 2000, No. 18).

§16411. Notice to Contractor and Affected Subcontractor.

(a) Upon the decision to withhold, retain or forfeit any sum from a payment due to a contractor as permitted by Labor Code § 1727, the Division of Labor Standards Enforcement shall give written notice to the awarding body, the contractor, and to any affected subcontractor, of the withholding, retention, or forfeiture.
(b) Said notice shall include the following information:
(1) The amount to be withheld, retained or forfeited.
(2) A short statement of the factual basis upon which said amount is to be withheld, retained, or forfeited, including, but not limited to, the computation of any wages found to be due, and the computation of any penalties assessed under Labor Code § 1775.
(3) Notice of the right to request a hearing under these regulations, and of the manner in which, and the time within which a hearing must be requested.
(c) Said notice shall be sent by certified mail to the last known address of the contractor, and to the last known address of any affected subcontractor. The records of the State Contractors' License Board may be used to determine the address of a contractor or affected subcontractor.
NOTE
Authority cited: Section 1773.5, Labor Code. Reference: Sections 1727, 1730, 1731, 1732, 1733, 1775, 1776(g) and 1813, Labor Code.
HISTORY
1. New section filed 2-16-99 as an emergency; operative 2-16-99 (Register 99, No. 8). A Certificate of Compliance must be transmitted to OAL by 6-16-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 6-14-99 as an emergency; operative 6-14-99 (Register 99, No. 25). A Certificate of Compliance must be transmitted to OAL by 10-12-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 10-4-99 as an emergency; operative 10-4-99 (Register 99, No. 41). A Certificate of Compliance must be transmitted to OAL by 2-1-2000 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 1-20-2000 as an emergency; operative 2-2-2000 (Register 2000, No. 3). A Certificate of Compliance must be transmitted to OAL by 6-1-2000 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 1-20-2000 order transmitted to OAL 3-29-2000 and filed 5-4-2000 (Register 2000, No. 18).

§16412. Withholding, Retention, or Forfeiture.

(a) When notice has been sent as provided in section 16411, above, the awarding body shall proceed to withhold, retain, or forfeit the amount stated in the notice, pursuant to Labor Code § 1727. Such withholding, retention, or forfeiture shall be subject to

the right of a contractor or affected subcontractor to request a hearing, as provided in section 16413, below, and further subject to the right of a contractor or a contractor's assignee to bring suit against the awarding body as provided by Labor Code §§ 1731-1733.
(b) Nothing in these regulations shall extend, or affect in any way, the statutory time limits provided by Labor Code §§ 1731-1733.
NOTE
Authority cited: Section 1773.5, Labor Code. Reference: Sections 1727, 1730, 1731, 1732, 1733, 1775, 1776(g) and 1813, Labor Code.
HISTORY
1. New section filed 2-16-99 as an emergency; operative 2-16-99 (Register 99, No. 8). A Certificate of Compliance must be transmitted to OAL by 6-16-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 6-14-99 as an emergency; operative 6-14-99 (Register 99, No. 25). A Certificate of Compliance must be transmitted to OAL by 10-12-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 10-4-99 as an emergency; operative 10-4-99 (Register 99, No. 41). A Certificate of Compliance must be transmitted to OAL by 2-1-2000 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 1-20-2000 as an emergency; operative 2-2-2000 (Register 2000, No. 3). A Certificate of Compliance must be transmitted to OAL by 6-1-2000 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 1-20-2000 order transmitted to OAL 3-29-2000 and filed 5-4-2000 (Register 2000, No. 18).

§ §16413. Request for Hearing.

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

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

(b) A request for hearing shall contain a statement of all factual and legal grounds upon which the withholding is contested, identifying the specific element or elements, issue or issues, being contested, including, but not limited to:
(1) the classification of workers included in the computation of wages found to be due;
(2) the hours worked by such workers;
(3) the prevailing wage requirements applicable to such classifications;
(4) the amounts paid to such workers;
(5) the assessment and computation of statutory penalties;
(6) any erroneous mathematical calculations.
Assertions of fact included in the statement shall be supported by documentary evidence, e.g., time cards, canceled checks, cash receipts, trust fund forms, books, documents, schedules, forms, reports, receipts or other evidence which reflect job assignments, work schedules by days and hours, and evidence of the disbursement by way of cash, check, or in whatever form or manner, of funds to a person or persons by job classification and/or skill, and, if appropriate, declarations under penalty of perjury.
NOTE
Authority cited: Section 1773.5, Labor Code. Reference: Sections 1727, 1730, 1731, 1732, 1733, 1775, 1776(g) and 1813, Labor Code.
HISTORY
1. New section filed 2-16-99 as an emergency; operative 2-16-99 (Register 99, No. 8). A Certificate of Compliance must be transmitted to OAL by 6-16-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 6-14-99 as an emergency; operative 6-14-99 (Register 99, No. 25). A Certificate of Compliance must be transmitted to OAL by 10-12-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 10-4-99 as an emergency; operative 10-4-99 (Register 99, No. 41). A Certificate of Compliance must be transmitted to OAL by 2-1-2000 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 1-20-2000 as an emergency; operative 2-2-2000 (Register 2000, No. 3). A Certificate of Compliance must be transmitted to OAL by 6-1-2000 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 1-20-2000 order transmitted to OAL 3-29-2000 and filed 5-4-2000 (Register 2000, No. 18).

§ §16414. Hearing.

(a) Upon receipt of a timely request for a hearing, the Labor Commissioner, or his or her deputy or agent shall, within 30 days, hold a hearing to determine whether reasonable cause exists to withhold and retain the funds identified in the notice provided under section 16411, above.
(b) The hearing date may be continued at the request of the party seeking the hearing upon a showing of good cause.
(c) The burden of proof at such hearing shall be as provided in Labor Code § 1733.
(d) Within 15 days after the conclusion of the Hearing the Hearing Officer shall issue a decision which affirms, modifies or dismisses the Notice to Withhold. This decision shall consist of a notice of findings, findings, and an order which shall be served on the awarding body and on all parties to the hearing by first class mail at the last known address of the parties

on file with the Labor Commissioner. The awarding body shall promptly abide by any decision of the Labor Commissioner with respect to the notice to withhold.

(e) The hearing pursuant to this section shall only determine whether reasonable cause exists for the withholding, retention, or forfeiture of funds pursuant to Labor Code § 1727. A hearing pursuant to this section shall not be deemed to be dispositive as to the contractor's (or affected subcontractor's) compliance with prevailing wage laws. Any decision rendered shall have no res judicata or collateral estoppel effect, and will not preclude the Labor Commissioner from pursuing any action provided by Labor Code § 1775 or any other statutory or common law remedy against any party. Neither the failure of a party to request a hearing nor the Labor Commissioner's decision after a hearing shall preclude the contractor or affected subcontractor from pursuing any other remedy provided by existing law.

NOTE

Authority cited: Section 1773.5, Labor Code. Reference: Sections 1727, 1730, 1731, 1732, 1733, 1775, 1776(g) and 1813, Labor Code.

HISTORY

1. New section filed 2-16-99 as an emergency; operative 2-16-99 (Register 99, No. 8). A Certificate of Compliance must be transmitted to OAL by 6-16-99 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 6-14-99 as an emergency; operative 6-14-99 (Register 99, No. 25). A Certificate of Compliance must be transmitted to OAL by 10-12-99 or emergency language will be repealed by operation of law on the following day.
3. New section refiled 10-4-99 as an emergency, including amendment of subsection (d); operative 10-4-99 (Register 99, No. 41). A Certificate of Compliance must be transmitted to OAL by 2-1-2000 or emergency language will be repealed by operation of law on the following day.
4. New section refiled 1-20-2000 as an emergency; operative 2-2-2000 (Register 2000, No. 3). A Certificate of Compliance must be transmitted to OAL by 6-1-2000 or emergency language will be repealed by operation of law on the following day.
5. Certificate of Compliance as to 1-20-2000 order, including amendment of subsection (d), transmitted to OAL 3-29-2000 and filed 5-4-2000 (Register 2000, No. 18).

APPENDIX C

CODE OF FEDERAL REGULATIONS, TITLE 29

PUBLIC WORKS REQUIREMENTS

IMPLEMENTING REGULATIONS

[Code of Federal Regulations]
[Title 29, Volume 1]
[Revised as of July 1, 2001]
From the U.S. Government Printing Office via GPO Access
[CITE: 29CFR1.1]

TITLE 29--LABOR

PART 1--PROCEDURES FOR PREDETERMINATION OF WAGE RATES

Table of Contents

(a) The procedural rules in this part apply under the Davis-Bacon Act (946 Stat. 1494, as amended; 40 U.S.C. 276a--276a-7) and other statutes listed in appendix A to this part which provide for the payment of minimum wages, including fringe benefits, to laborers and mechanics engaged in construction activity under contracts entered into or financed by or with the assistance of agencies of the United States or the District of Columbia, based on determinations by the Secretary of Labor of the wage rates and fringe benefits prevailing for the corresponding classes of laborers and mechanics employed on projects similar to the contract work in the local areas where such work is to be performed. Functions of the Secretary of Labor under these statutes and under Reorganization Plan No. 14 of 1950 (64 Stat. 1267, 5 U.S.C. appendix), except those assigned to the Administrative Review Board (see 29 CFR part 7), have been delegated to the Deputy Under Secretary of Labor for Employment Standards who in turn has delegated the functions to the Administrator of the Wage and Hour Division, and authorized representatives.

(b) The regulations in this part set forth the procedures for making and applying such determinations of prevailing wage rates and fringe benefits pursuant to the Davis-Bacon Act, each of the other statutes listed in appendix A, and any other Federal statute providing for determinations of such wages by the Secretary of Labor in accordance with the provisions of the Davis-Bacon Act.

(c) Procedures set forth in this part are applicable, unless otherwise indicated, both to general wage determinations for contracts in specified localities, and to project wage determinations for use on contract work to be performed on a specific project.

[48 FR 19533, Apr. 29, 1983, as amended at 50 FR 49823, Dec. 4, 1985]

Sec. 1.2 Definitions. \1\

\1 \These definitions are not intended to restrict the meaning of the terms as used in the applicable statutes.

(a)(1) The prevailing wage shall be the wage paid to the majority (more than 50 percent) of the laborers or mechanics in the classification on similar projects in the area during the period in question. If the same wage is not paid to a majority of those employed in the classification, the prevailing wage shall be the average of the wages paid, weighted by the total employed in the classification.

(2) In determining the prevailing wages at the time of issuance of a wage determination, the Administrator will be guided by paragraph (a)(1) of this section and will consider the types of information listed in Sec. 1.3 of this part.

(b) The term area in determining wage rates under the Davis-Bacon Act and the prevailing wage provisions of the other statutes listed in appendix A shall mean the city, town, village, county or other civil subdivision of the State in which the work is to be performed.

(c) The term Administrator shall mean the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, or authorized representative.

(d) The term agency shall mean the Federal agency, State highway department under 23 U.S.C. 113, or recipient State or local government under title 1 of the State and Local Fiscal Assistance Act of 1972.

[48 FR 19533, Apr. 29, 1983, as amended at 48 FR 50313, Nov. 1, 1983]

Sec. 1.3 Obtaining and compiling wage rate information.

For the purpose of making wage determinations, the Administrator will conduct a continuing program for the obtaining and compiling of wage rate information.

(a) The Administrator will encourage the voluntary submission of wage rate data by contractors, contractors' associations, labor organizations, public officials and other interested parties, reflecting wage rates paid to laborers and mechanics on various types of construction in the area. The Administrator may also obtain data from agencies on wage rates paid on construction projects under their jurisdiction. The information submitted should reflect not only the wage rates paid a particular classification in an area, but also the type or types of construction on which such rate or rates are paid, and whether or not such rates were paid on Federal or federally assisted projects subject to Davis-Bacon prevailing wage requirements.

(b) The following types of information may be considered in making wage rate determinations:

(1) Statements showing wage rates paid on projects. Such statements should include the names

and addresses of contractors, including subcontractors, the locations, approximate costs, dates of construction and types of projects, whether or not the projects are Federal or federally assisted projects subject to Davis-Bacon prevailing wage requirements, the number of workers employed in each classification on each project, and the respective wage rates paid such workers.

(2) Signed collective bargaining agreements. The Administrator may request the parties to an agreement to submit statements certifying to its scope and application.

(3) Wage rates determined for public construction by State and local officials pursuant to State and local prevailing wage legislation.

(4) In making wage rate determinations pursuant to 23 U.S.C. 113, the highway department of the State in which a project in the Federal-Aid highway system is to be performed shall be consulted. Before making a determination of wage rates for such a project the Administrator shall give due regard to the information thus obtained.

(5) Wage rate data submitted to the Department of Labor by contracting agencies pursuant to 29 CFR 5.5(a)(1)(ii).

(6) Any other information pertinent to the determination of prevailing wage rates.

(c) The Administrator may initially obtain or supplement such information obtained on a voluntary basis by such means, including the holding of hearings, and from any sources determined to be necessary. All information of the types described in Sec. 1.3(b) of this part, pertinent to the determination of the wages prevailing at the time of issuance of the wage determination, will be evaluated in the light of Sec. 1.2(a) of this part.

(d) In compiling wage rate data for building and residential wage determinations, the Administrator will not use data from Federal or federally assisted projects subject to Davis-Bacon prevailing wage requirements unless it is determined that there is insufficient wage data to determine the prevailing wages in the absence of such data. Data from Federal or federally assisted projects will be used in compiling wage rate data for heavy and highway wage determinations.

[48 FR 19533, Apr. 29, 1983, as amended at 50 FR 4506, Jan. 31, 1985]

Sec. 1.4 Outline of agency construction programs.

To the extent practicable, at the beginning of each fiscal year each agency using wage determinations under any of the various statutes listed in appendix A will furnish the Administrator with a general outline of its proposed construction programs for the coming year indicating the estimated number of projects for which wage determinations will be required, the anticipated types of construction, and the locations of construction. During the fiscal year, each agency will notify the Administrator of any significant changes in its proposed construction programs, as outlined at the beginning of the fiscal year. This report has been cleared in accordance with FPMR 101-11.11 and assigned interagency report control number 1671-DOL-AN.

Sec. 1.5 Procedure for requesting wage determinations.

(a)(1) Except as provided in paragraph (b) of this section, the Federal agency shall initially request a wage determination under the Davis-Bacon Act or any of its related prevailing wage statutes by submitting Standard Form 308 to the Department of Labor at this address:

U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Branch of Construction Contract Wage Determination, Washington, DC 20210.

The agency shall check only those classifications on the applicable form which will be needed in the performance of the work. Inserting a note such as ``entire schedule" or ``all applicable classifications" is not sufficient. Additional classifications needed which are not on the form may be typed in the blank spaces or on a separate list and attached to the form.

(2) In completing SF-308, the agency shall furnish:

(i) A sufficiently detailed description of the work to indicate the type of construction involved. Additional description or separate attachment, if necessary for identification of type of project, shall be furnished.

(ii) The county (or other civil subdivision) and State in which the proposed project is located.

(3) Such request for a wage determination shall be accompanied by any pertinent wage payment information which may be available. When the requesting agency is a State highway department under the Federal-Aid Highway Acts as codified in 23 U.S.C. 113, such agency shall also include its recommendations as to the wages which are prevailing for each classification of laborers and mechanics on similar construction in the area.

(b) Whenever the wage patterns in a particular area for a particular type of construction are well settled and whenever it may be reasonably anticipated that there will be a large volume of procurement in that area for such a type of construction, the Administrator, upon the request of a Federal agency or in his/her discretion, may furnish notice of a general wage determination in the Federal Register when, after consideration of the facts and circumstances involved, the Administrator finds that the applicable statutory standards and those of this part will be met. If there is a general wage determination applicable to the project, the agency may use it without notifying the Department of Labor, Provided, That questions concerning its use shall be referred to the Department of Labor in accordance with Sec. 1.6(b). General wage determinations are

published in the Government Printing Office (GPO) document entitled ``General Wage Determinations Issued Under The Davis-Bacon And Related Acts". (See appendix C for publication details and information on how to obtain general wage determinations.)

(c) The time required for processing requests for wage determinations varies according to the facts and circumstances in each case. An agency should anticipate that such processing in the Department of Labor will take at least 30 days.

[48 FR 19533, Apr. 29, 1983, as amended at 48 FR 50313, Nov. 1, 1983; 50 FR 49823, Dec. 4, 1985]

Sec. 1.6 Use and effectiveness of wage determinations.

(a)(1) Project wage determinations initially issued shall be effective for 180 calendar days from the date of such determinations. If such a wage determination is not used in the period of its effectiveness it is void. Accordingly, if it appears that a wage determination may expire between bid opening and contract award (or between initial endorsement under the National Housing Act or the execution of an agreement to enter into a housing assistance payments contract under section 8 of the U.S. Housing Act of 1937, and the start of construction) the agency shall request a new wage determination sufficiently in advance of the bid opening to assure receipt prior thereto. However, when due to unavoidable circumstances a determination expires before award but after bid opening (or before the start of construction, but after initial endorsement under the National Housing Act, or before the start of construction but after the execution of an agreement to enter into a housing assistance payments contract under section 8 of the U.S. Housing Act of 1937), the head of the agency or his or her designee may request the Administrator to extend the expiration date of the wage determination in the bid specifications instead of issuing a new wage determination. Such request shall be supported by a written finding, which shall include a brief statement of the factual support, that the extension of the expiration date of the determination is necessary and proper in the public interest to prevent injustice or undue hardship or to avoid serious impairment in the conduct of Government business. The Administrator will either grant or deny the request for an extension after consideration of all of the circumstances, including an examination to determine if the previously issued rates remain prevailing. If the request for extension is denied, the Administrator will proceed to issue a new wage determination for the project.

(2) General wage determinations issued pursuant to Sec. 1.5(b), notice of which is published in the Federal Register, shall contain no expiration date.

(b) Contracting agencies are responsible for insuring that only the appropriate wage determination(s) are incorporated in bid solicitations and contract specifications and for designating specifically the work to which such wage determinations will apply. Any question regarding application of wage rate schedules shall be referred to the Administrator, who shall give foremost consideration to area practice in resolving the question.

(c)(1) Project and general wage determinations may be modified from time to time to keep them current. A modification may specify only the items being changed, or may be in the form of a supersedeas wage determination, which replaces the entire wage determination. Such actions are distinguished from a determination by the Administrator under paragraphs (d), (e) and (f) of this section that an erroneous wage determination has been issued or that the wrong wage determination or wage rate schedule has been utilized by the agency.

(2)(i) All actions modifying a project wage determination received by the agency before contract award (or the start of construction where there is no contract award) shall be effective except as follows:

(A) In the case of contracts entered into pursuant to competitive bidding procedures, modifications received by the agency less than 10 days before the opening of bids shall be effective unless the agency finds that there is not a reasonable time still available before bid opening, to notify bidders of the modification and a report of the finding is inserted in the contract file. A copy of such report shall be made available to the Administrator upon request. No such report shall be required if the modification is received after bid opening.

(B) In the case of projects assisted under the National Housing Act, modifications shall be effective if received prior to the beginning of construction or the date the mortgage is initially endorsed, whichever occurs first.

(C) In the case of projects to receive housing assistance payments under section 8 of the U.S. Housing Act of 1937, modifications shall be effective if received prior to the beginning of construction or the date the agreement to enter into a housing assistance payments contract is executed, whichever occurs first.

(ii) Modifications to project wage determinations and supersedeas wage determinations shall not be effective after contract award (or after the beginning of construction where there is no contract award).

(iii) Actual written notice of a modification shall constitute receipt.

(3) All actions modifying a general wage determination shall be effective with respect to any project to which the determination applies, if notice of such actions is published before contract award (or the start of construction where there is no contract award), except as follows:

(i) In the case of contracts entered into pursuant to competitive bidding procedures, a modification, notice of which is published less than 10 days before the opening of bids, shall be effective unless the agency finds that there is not a reasonable time still available before bid opening to notify bidders of the

modification and a report of the finding is inserted in the contract file. A copy of such report shall be made available to the Administrator upon request. No such report shall be required if notice of the modification is published after bid opening.

(ii) In the case of projects assisted under the National Housing Act, a modification shall be effective if notice of such modification is published prior to the beginning of construction or the date the mortgage is initially endorsed, whichever occurs first.

(iii) In the case of projects to receive housing assistance payments under section 8 of the U.S. Housing Act of 1937, a modification shall be effective if notice of such modification is published prior to the beginning of construction or the date the agreement to enter into a housing assistance payments contract is signed, whichever occurs first.

(iv) If under paragraph (c)(3)(i) of this section the contract has not been awarded within 90 days after bid opening, or if under paragraph (c)(3)(ii) or (iii) of this section construction has not begun within 90 days after initial endorsement or the signing of the agreement to enter into a housing assistance payments contract, any modification, notice of which is published in the Federal Register prior to award of the contract or the beginning of construction, as appropriate, shall be effective with respect to that contract unless the head of the agency or his or her designee requests and obtains an extension of the 90-day period from the Administrator. Such request shall be supported by a written finding, which shall include a brief statement of the factual support, that the extension is necessary and proper in the public interest to prevent injustice or undue hardship or to avoid serious impairment in the conduct of Government business. The Administrator will either grant or deny the request for an extension after consideration of all the circumstances.

(v) A modification to a general wage determination is ``published" within the meaning of this section on the date of publication of notice of such modification in the Federal Register, or on the date the agency receives actual written notice of the modification from the Department of Labor, whichever occurs first.

(vi) A supersedeas wage determination or a modification to an applicable general wage determination, notice of which is published after contract award (or after the beginning of construction where there is no contract award) shall not be effective.

(d) Upon his/her own initiative or at the request of an agency, the Administrator may correct any wage determination, without regard to paragraph (c) of this section, whenever the Administrator finds such a wage determination contains clerical errors. Such corrections shall be included in any bid specifications containing the wage determination, or in any on-going contract containing the wage determination in question, retroactively to the start of construction.

(e) Written notification by the Department of Labor prior to the award of a contract (or the start of construction under the National Housing Act, under section 8 of the U.S. Housing Act of 1937, or where there is no contract award) that: (1) There is included in the bidding documents or solicitation the wrong wage determination or the wrong schedule or that (2) a wage determination is withdrawn by the Department of Labor as a result of a decision by the Administrative Review Board, shall be effective immediately without regard to paragraph (c) of this section.

(f) The Administrator may issue a wage determination after contract award or after the beginning of construction if the agency has failed to incorporate a wage determination in a contract required to contain prevailing wage rates determined in accordance with the Davis-Bacon Act, or has used a wage determination which by its terms or the provisions of this part clearly does not apply to the contract. Further, the Administrator may issue a wage determination which shall be applicable to a contract after contract award or after the beginning of construction when it is found that the wrong wage determination has been incorporated in the contract because of an inaccurate description of the project or its location in the agency's request for the wage determination. Under any of the above circumstances, the agency shall either terminate and resolicit the contract with the valid wage determination, or incorporate the valid wage determination retroactive to the beginning of construction through supplemental agreement or through change order, Provided That the contractor is compensated for any increases in wages resulting from such change. The method of incorporation of the valid wage determination, and adjustment in contract price, where appropriate, should be in accordance with applicable procurement law.

(g) If Federal funding or assistance under a statute requiring payment of wages determined in accordance with the Davis-Bacon Act is not approved prior to contract award (or the beginning of construction where there is no contract award), the agency shall request a wage determination prior to approval of such funds. Such a wage determination shall be issued based upon the wages and fringe benefits found to be prevailing on the date of award or the beginning of construction (under the National Housing Act, under section 8 of the U.S. Housing Act of 1937 or where there is no contract award), as appropriate, and shall be incorporated in the contract specifications retroactively to that date, Provided, That upon the request of the head of the agency in individual cases the Administrator may issue such a wage determination to be effective on the date of approval of Federal funds or assistance whenever the Administrator finds that it is necessary and proper in the public interest to prevent injustice or undue hardship, Provided further That the Administrator finds no evidence of intent to apply for Federal funding or assistance prior to contract award or the start of construction, as appropriate.

[48 FR 19533, Apr. 29, 1983, as amended at 50 FR 49823, Dec. 4, 1985]

Sec. 1.7 Scope of consideration.

(a) In making a wage determination, the area will normally be the county unless sufficient current wage data (data on wages paid on current projects or, where necessary, projects under construction no more than one year prior to the beginning of the survey or the request for a wage determination, as appropriate) is unavailable to make a wage determination.

(b) If there has not been sufficient similar construction within the area in the past year to make a wage determination, wages paid on similar construction in surrounding counties may be considered, Provided That projects in metropolitan counties may not be used as a source of data for a wage determination in a rural county, and projects in rural counties may not be used as a source of data for a wage determination for a metropolitan county.

(c) If there has not been sufficient similar construction in surrounding counties or in the State in the past year, wages paid on projects completed more than one year prior to the beginning of the survey or the request for a wage determination, as appropriate, may be considered.

(d) The use of helpers, apprentices and trainees is permitted in accordance with part 5 of this subtitle.

[48 FR 19533, Apr. 29, 1983, as amended at 50 FR 4507, Jan. 31, 1985; 55
FR 50149, Dec. 4, 1990; 65 FR 69692, Nov. 20, 2000]

Sec. 1.8 Reconsideration by the Administrator.

Any interested person may seek reconsideration of a wage determination issued under this part or of a decision of the Administrator regarding application of a wage determination. Such a request for reconsideration shall be in writing accompanied by a full statement of the interested person's views and any supporting wage data or other pertinent information. The Administrator will respond within 30 days of receipt thereof, or will notify the requestor within the 30-day period that additional time is necessary.

Sec. 1.9 Review by Administrative Review Board.

Any interested person may appeal to the Administrative Review Board for a review of a wage determination or its application made under this part, after reconsideration by the Administrator has been sought pursuant to Sec. 1.8 and denied. Any such appeal may, in the discretion of the Administrative Review Board, be received, accepted, and decided in accordance with the provisions of 29 CFR part 7 and such other procedures as the Board may establish.

Appendix A to Part 1

Statutes Related to the Davis-Bacon Act Requiring Payment of Wages at Rates Predetermined by the Secretary of Labor

1. The Davis-Bacon Act (secs. 1-7, 46 Stat. 1494, as amended; Pub. L. 74-403, 40 U.S.C. 276a-276a-7).
2. National Housing Act (sec. 212 added to c. 847, 48 Stat. 1246, by sec. 14, 53 Stat. 807; 12 U.S.C. 1715c and repeatedly amended).
3. Housing Act of 1950 (college Housing) (amended by Housing Act of 1959 to add labor provisions, 73 Stat. 681; 12 U.S.C. 1749a(f)).
4. Housing Act of 1959 (sec. 401(f) of the Housing Act of 1950 as amended by Pub. L. 86-372, 73 Stat. 681; 12 U.S.C. 1701q(c)(3)).
5. Commercial Fisheries Research and Development Act of 1964 (sec. 7, 78 Stat. 199; 16 U.S.C. 779e(b)).
6. Library Services and Construction Act (sec. 7(a), 78 Stat. 13; 20 U.S.C. 355c(a)(4), as amended).
7. National Technical Institute for the Deaf Act (sec. 5(b)(5), 79 Stat. 126; 20 U.S.C. 684(b)(5)).
8. National Foundation on the Arts and Humanities Act of 1965 (sec. 5(k), 79 Stat. 846 as amended; 20 U.S.C. 954(j)).
9. Elementary and Secondary Education Act of 1965 as amended by Elementary and Secondary and other Education Amendments of 1969 (sec. 423 as added by Pub. L. 91-230, title IV, sec. 401(a)(10), 84 Stat. 169, and renumbered sec. 433, by Pub. L. 92-318; title III, sec. 301(a)(1), 86 Stat. 326; 20 U.S.C. 1232(b)). Under the amendment coverage is extended to all programs administered by the Commissioner of Education.
10. The Federal-Aid Highway Acts (72 Stat. 895, as amended by 82 Stat. 821; 23 U.S.C. 113, as amended by the Surface Transportation Assistance Act of 1982, Pub. L. 97-424).
11. Indians Self-Determination and Education Assistance Act (sec. 7, 88 Stat. 2205; 25 U.S.C. 450e).
12. Indian Health Care Improvement Act (sec. 303(b), 90 Stat. 1407; 25 U.S.C. 1633(b)).
13. Rehabilitation Act of 1973 (sec. 306(b)(5), 87 Stat. 384, 29 U.S.C. 776(b)(5)).
14. Comprehensive Employment and Training Act of 1973 (sec. 606, 87 Stat. 880, renumbered sec. 706 by 83 Stat. 1845; 29 U.S.C. 986; also sec. 604, 88 Stat. 1846; 29 U.S.C. 964(b)(3)).
15. State and Local Fiscal Assistance Act of 1972 (sec. 123(a)(6), 86 Stat. 933; 31 U.S.C. 1246(a)(6)).
16. Federal Water Pollution Control Act (sec. 513 of sec. 2, 86 Stat. 894; 33 U.S.C. 1372).
17. Veterans Nursing Home Care Act of 1964 (78 Stat. 502, as amended; 38 U.S.C. 5035(a)(8)).
18. Postal Reorganization Act (sec. 410(b)(4)(C); 84 Stat. 726 as amended; 39 U.S.C. 410(b)(4)(C)).
19. National Visitors Center Facilities Act of 1968 (sec. 110, 32 Stat. 45; 40 U.S.C. 808).

20. Appalachian Regional Development Act of 1965 (sec. 402, 79 Stat. 21; 40 U.S.C. App. 402).

21. Health Services Research, Health Statistics, and Medical Libraries Act of 1974 (sec. 107, see sec. 306(h)(2) thereof, 83 Stat. 370, as amended by 90 Stat. 378; 42 U.S.C. 242m(h)(2)).

22. Hospital Survey and Construction Act, as amended by the Hospital and Medical Facilities Amendments of 1964 (sec. 605(a)(5), 78 Stat. 453; 42 U.S.C. 291e(a)(5)).

23. Health Professions Education Assistance Act (sec. 303(b), 90 Stat. 2254; 42 U.S.C. 293a(g)(1)(C); also sec. 308a, 90 Stat. 2256; 42 U.S.C. 293a(c)(7)).

24. Nurse Training Act of 1964 (sec. 941(a)(1)(C), 89 Stat. 364; 42 U.S.C. 296a(b)(5)).

25. Heart Disease, Cancer, and Stroke Amendments of 1965 (sec. 904, as added by sec. 2, 79 Stat. 928; 42 U.S.C. 299d(b)(4)).

26. Safe Drinking Water Act (sec. 2(a), see sec. 1450e thereof, 88 Stat. 1691; 42 U.S.C. 300j-9(e)).

27. National Health Planning and Resources Act (sec. 4, see sec. 1604(b)(1)(H), 88 Stat. 2261, 42 U.S.C. 300o-3(b)(1)(H)).

28. U.S. Housing Act of 1937, as amended and recodified (88 Stat. 667; 42 U.S.C. 1437j).

29. Demonstration Cities and Metropolitan Development Act of 1966 (secs. 110, 311, 503, 1003, 80 Stat. 1259, 1270, 1277, 1284; 42 U.S.C. 3310; 12 U.S.C. 1715c; 42 U.S.C. 1437j).

30. Slum clearance program: Housing Act of 1949 (sec. 109, 63 Stat. 419, as amended; 42 U.S.C. 1459).

31. Farm housing: Housing Act of 1964 (adds sec. 516(f) to Housing Act of 1949 by sec. 503, 78 Stat. 797; 42 U.S.C. 1486(f)).

32. Housing Act of 1961 (sec. 707, added by sec. 907, 79 Stat. 496, as amended; 42 U.S.C. 1500c-3).

33. Defense Housing and Community Facilities and Services Act of 1951 (sec. 310, 65 Stat. 307; 42 U.S.C. 1592i).

34. Special Health Revenue Sharing Act of 1975 (sec. 303, see sec. 222(a)(5) thereof, 89 Stat. 324; 42 U.S.C. 2689j(a)(5)).

35. Economic Opportunity Act of 1964 (sec. 607, 78 Stat. 532; 42 U.S.C. 2947).

36. Headstart, Economic Opportunity, and Community Partnership Act of 1974 (sec. 11, see sec. 811 thereof, 88 Stat. 2327; 42 U.S.C. 2992a).

37. Housing and Urban Development Act of 1965 (sec. 707, 79 Stat. 492 as amended; 42 U.S.C. 3107).

38. Older Americans Act of 1965 (sec. 502, Pub. L. 89-73, as amended by sec. 501, Pub. L. 93-29; 87 Stat. 50; 42 U.S.C. 3041a(a)(4)).

39. Public Works and Economic Development Act of 1965 (sec. 712, 79 Stat. 575 as amended; 42 U.S.C. 3222).

40. Juvenile Delinquency Prevention Act (sec. 1, 86 Stat. 536; 42 U.S.C. 3884).

41. New Communities Act of 1968 (sec. 410.82 Stat. 516; 42 U.S.C. 3909).

42. Urban Growth and New Community Development Act of 1970 (sec. 727(f), 84 Stat. 1803; 42 U.S.C. 4529).

43. Domestic Volunteer Service Act of 1973 (sec. 406, 87 Stat. 410; 42 U.S.C. 5046).

44. Housing and Community Development Act of 1974 (secs. 110, 802(g), 83 Stat. 649, 724; 42 U.S.C. 5310, 1440(g)).

45. Developmentally Disabled Assistance and Bill of Rights Act (sec. 126(4), 89 Stat. 488; 42 U.S.C. 6042(4); title I, sec. 111, 89 Stat. 491; 42 U.S.C. 6063(b)(19)).

46. National Energy Conservation Policy Act (sec. 312, 92 Stat. 3254; 42 U.S.C. 6371j).

47. Public Works Employment Act of 1976 (sec. 109, 90 Stat. 1001; 42 U.S.C. 6708; also sec. 208, 90 Stat. 1008; 42 U.S.C. 6728).

48. Energy Conservation and Production Act (sec. 45(h), 90 Stat. 1168; 42 U.S.C. 6881(h)).

49. Solid Waste Disposal Act (sec. 2, 90 Stat. 2828; 42 U.S.C. 6979).

50. Rail Passenger Service Act of 1970 (sec. 405d, 84 Stat. 1337; 45 U.S.C. 565(d)).

51. Urban Mass Transportation Act of 1964 (sec. 10, 78 Stat. 307; renumbered sec. 13 by 88 Stat. 715; 49 U.S.C. 1609).

52. Highway speed ground transportation study (sec. 6(b), 79 Stat. 893; 49 U.S.C. 1636(b)).

53. Airport and Airway Development Act of 1970 (sec. 22(b), 84 Stat. 231; 49 U.S.C. 1722(b)).

54. Federal Civil Defense Act of 1950 (50 U.S.C. App. 2281(i)).

55. National Capital Transportation Act of 1965 (sec. 3(b)(4), 79 Stat; 40 U.S.C. 682(b)(4)).

Note: Repealed Dec. 9, 1969 and labor standards incorporated in sec. 1-1431 of the District of Columbia Code.

56. Model Secondary School for the Deaf Act (sec. 4, 80 Stat. 1027, Pub. L. 89-694, but not in the United States Code).

57. Delaware River Basin Compact (sec. 15.1, 75 Stat. 714, Pub. L. 87-328) (considered a statute for purposes of this part but not in the United States Code).

58. Energy Security Act (sec. 175(c), Pub. L. 96-294, 94 Stat. 611; 42 U.S.C. 8701 note).

[48 FR 19533, Apr. 29, 1983; 48 FR 20408, May 6, 1983]

Appendix B to Part 1

Boston Region

For the States of Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont:

Assistant Regional Administrator for Wage-Hour, Employment Standards Administration, U.S. Department of Labor, JFK Federal Building,

Government Center, room 1612C, Boston, Massachusetts 02203 (telephone: 617-223-5565).

New York Region

For the States of New Jersey and New York and for the Canal Zone, Puerto Rico, and the Virgin Islands:

Assistant Regional Administrator for Wage-Hour, Employment Standards Administration, U.S. Department of Labor, 1515 Broadway, room 3300, New York, New York 10036 (telephone: 212-399-5443).

Philadelphia Region

For the States of Delaware, Maryland, Pennsylvania, Virginia, and West Virginia, and the District of Columbia:

Assistant Regional Administrator for Wage-Hour, Employment Standards Administration, U.S. Department of Labor, Gateway Building, room 15220, 3535 Market Street, Philadelphia, Pennsylvania 19104 (telephone: 215-596-1193).

Atlanta Region

For the States of Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee:

Assistant Regional Administrator for Wage-Hour, Employment Standards Administration, U.S. Department of Labor, 1371 Peachtree Street, NE., room 305, Atlanta, Georgia 30309 (telephone: 404-881-4801).

Chicago Region

For the States of Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin:

Assistant Regional Administrator for Wage-Hour, Employment Standards Administration, U.S. Department of Labor, 230 South Dearborn Street, 8th Floor, Chicago, Illinois 60604 (telephone: 312-353-7249).

Dallas Region

For the States of Arkansas, Louisiana, New Mexico, Oklahoma, and Texas:

Assistant Regional Administrator for Wage-Hour, Employment Standards Administration, U.S. Department of Labor, 555 Griffin Square Building, Young and Griffin Streets, Dallas, Texas 75202 (telephone: 214-767-6891).

Kansas City Region

For the States of Iowa, Kansas, Missouri, and Nebraska:

Assistant Regional Administrator for Wage-Hour, Employment Standards Administration, U.S. Department of Labor, Federal Office Building, room 2000, 911 Walnut Street, Kansas City, Missouri 64106 (telephone: 816-374-5386).

Denver Region

For the States of Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming:

Assistant Regional Administrator for Wage-Hour, Employment Standards Administration, U.S. Department of Labor, Federal Office Building, room 1440, 1961 Stout Street, Denver, Colorado 80294 (telephone: 304-837-4613).

San Francisco Region

For the States of Arizona, California, Hawaii, and Nevada:

Assistant Regional Administrator for Wage-Hour, Employment Standards Administration, U.S. Department of Labor, 450 Golden Gate Avenue, room 10353, San Francisco, California 94102 (telephone: 415-556-3592).

Seattle Region

For the States of Alaska, Idaho, Oregon, and Washington:

Assistant Regional Administrator for Wage-Hour, Employment Standards Administration, U.S. Department of Labor, Federal Office Building, room 4141, 909 First Avenue, Seattle, Washington 98174 (telephone: 206-442-1916).

Appendix C to Part 1

General Wage Determinations Issued Under The Davis-Bacon And Related Acts is published weekly by the Government Printing Office (GPO). This publication is available for examination at all 80 Regional Government Depository Libraries and many other of the 1,400 Government Depository Libraries across the country. Subscriptions may be obtained by contacting: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238. The publication is divided into three volumes--East, Central, and West--which may be ordered separately. The States covered by each volume are as follows: (Regional breakdowns of States are provided in appendix B.)

Volume I--East

Alabama
Connecticut
Delaware
Florida
Georgia
Kentucky
Maine

Maryland
Massachusetts
Mississippi
New Hampshire
New Jersey
New York
North Carolina
Pennsylvania
Rhode Island
South Carolina
Tennessee
Vermont
Virginia
West Virginia
District of Col.
Canal Zone
Puerto Rico
Virgin Islands

[50 FR 49823, Dec. 4, 1985]

Volume II--Central

Arkansas
Illinois
Indiana
Iowa
Kansas
Louisiana
Michigan
Minnesota
Missouri
Nebraska
New Mexico
Ohio
Oklahoma
Texas
Wisconsin

Volume III--West

Alaska
Arizona
California
Colorado
Hawaii
Idaho
Montana
Nevada
North Dakota
Oregon
South Dakota
Utah
Washington
Wyoming

On or about January 1 of each year, an annual edition will be issued that includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed providing any modifications or supersedeas wage determinations issued. Each volume's annual and weekly editions will be provided in loose-leaf format.

[Code of Federal Regulations]
[Title 29, Volume 1]
[Revised as of July 1, 2001]
From the U.S. Government Printing Office via GPO Access
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TITLE 29--LABOR

PART 3--CONTRACTORS AND SUBCONTRACTORS ON PUBLIC BUILDING OR PUBLIC WORK FINANCED IN WHOLE OR IN PART BY LOANS OR GRANTS FROM THE UNITED STATES--Table of Contents

Sec. 3.1 Purpose and scope.

This part prescribes ``anti-kickback" regulations under section 2 of the Act of June 13, 1934, as amended (40 U.S.C. 276c), popularly known as the Copeland Act. This part applies to any contract which is subject to Federal wage standards and which is for the construction, prosecution, completion, or repair of public buildings, public works or buildings or works financed in whole or in part by loans or grants from the United States. The part is intended to aid in the enforcement of the minimum wage provisions of the Davis-Bacon Act and the various statutes dealing with federally assisted construction that contain similar minimum wage provisions, including those provisions which are not subject to Reorganization Plan No. 14 (e.g., the College Housing Act of 1950, the Federal Water Pollution Control Act, and the Housing Act of 1959), and in the enforcement of the overtime provisions of the Contract Work Hours Standards Act whenever they are applicable to construction work. The part details the obligation of contractors and subcontractors relative to the weekly submission of statements regarding the wages paid on work covered thereby; sets forth the circumstances and procedures governing the making of payroll deductions from the wages of those employed on such work; and delineates the methods of payment permissible on such work.

Sec. 3.2 Definitions.

As used in the regulations in this part:

(a) The terms building or work generally include construction activity as distinguished from manufacturing, furnishing of materials, or servicing and maintenance work. The terms include, without limitation, buildings, structures, and improvements of all types, such as bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, powerlines, pumping stations, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, and canals; dredging, shoring, scaffolding, drilling, blasting, excavating, clearing, and landscaping. Unless conducted in connection with and at the site of such a building or work as is described in the foregoing sentence, the manufacture or furnishing of materials, articles, supplies, or equipment (whether or not a Federal or State agency acquires title to such materials, articles, supplies, or equipment during the course of the manufacture or furnishing, or owns the materials from which they are manufactured or furnished) is not a building or work within the meaning of the regulations in this part.

(b) The terms construction, prosecution, completion, or repair mean all types of work done on a particular building or work at the site thereof, including, without limitation, altering, remodeling, painting and decorating, the transporting of materials and supplies to or from the building or work by the employees of the construction contractor or construction subcontractor, and the manufacturing or furnishing of materials, articles, supplies, or equipment on the site of the building or work, by persons employed at the site by the contractor or subcontractor.

(c) The terms public building or public work include building or work for whose construction, prosecution, completion, or repair, as defined above, a Federal agency is a contracting party, regardless of whether title thereof is in a Federal agency.

(d) The term building or work financed in whole or in part by loans or grants from the United States includes building or work for whose construction, prosecution, completion, or repair, as defined above, payment or part payment is made directly or indirectly from funds provided by loans or grants by a Federal agency. The term includes building or work for which the Federal assistance granted is in the form of loan guarantees or insurance.

(e) Every person paid by a contractor or subcontractor in any manner for his labor in the construction, prosecution, completion, or repair of a public building or public work or building or work financed in whole or in part by loans or grants from the United States is employed and receiving wages, regardless of any contractual relationship alleged to exist between him and the real employer.

(f) The term any affiliated person includes a spouse, child, parent, or other close relative of the contractor or subcontractor; a partner or officer of the contractor or subcontractor; a corporation closely connected with the contractor or subcontractor as parent, subsidiary, or otherwise, and an officer or agent of such corporation.

(g) The term Federal agency means the United States, the District of Columbia, and all executive departments, independent establishments, administrative agencies, and instrumentalities of the United States and of the District of Columbia, including corporations, all or substantially all of the stock of which is beneficially owned by the United

States, by the District of Columbia, or any of the foregoing departments, establishments, agencies, and instrumentalities.

[29 FR 97, Jan. 4, 1964, as amended at 38 FR 32575, Nov. 27, 1973]

Sec. 3.3 Weekly statement with respect to payment of wages.

(a) As used in this section, the term employee shall not apply to persons in classifications higher than that of laborer or mechanic and those who are the immediate supervisors of such employees.

(b) Each contractor or subcontractor engaged in the construction, prosecution, completion, or repair of any public building or public work, or building or work financed in whole or in part by loans or grants from the United States, shall furnish each week a statement with respect to the wages paid each of its employees engaged on work covered by this part 3 and part 5 of this chapter during the preceding weekly payroll period. This statement shall be executed by the contractor or subcontractor or by an authorized officer or employee of the contractor or subcontractor who supervises the payment of wages, and shall be on form WH 348, ``Statement of Compliance", or on an identical form on the back of WH 347, ``Payroll (For Contractors Optional Use)" or on any form with identical wording. Sample copies of WH 347 and WH 348 may be obtained from the Government contracting or sponsoring agency, and copies of these forms may be purchased at the Government Printing Office.

(c) The requirements of this section shall not apply to any contract of $2,000 or less.

(d) Upon a written finding by the head of a Federal agency, the Secretary of Labor may provide reasonable limitations, variations, tolerances, and exemptions from the requirements of this section subject to such conditions as the Secretary of Labor may specify.

[29 FR 97, Jan. 4, 1964, as amended at 33 FR 10186, July 17, 1968; 47 FR 23679, May 28, 1982]

Sec. 3.4 Submission of weekly statements and the preservation and inspection of weekly payroll records.

(a) Each weekly statement required under Sec. 3.3 shall be delivered by the contractor or subcontractor, within seven days after the regular payment date of the payroll period, to a representative of a Federal or State agency in charge at the site of the building or work, or, if there is no representative of a Federal or State agency at the site of the building or work, the statement shall be mailed by the contractor or subcontractor, within such time, to a Federal or State agency contracting for or financing the building or work. After such examination and check as may be made, such statement, or a copy thereof, shall be kept available, or shall be transmitted together with a report of any violation, in accordance with applicable procedures prescribed by the United States Department of Labor.

(b) Each contractor or subcontractor shall preserve his weekly payroll records for a period of three years from date of completion of the contract. The payroll records shall set out accurately and completely the name and address of each laborer and mechanic, his correct classification, rate of pay, daily and weekly number of hours worked, deductions made, and actual wages paid. Such payroll records shall be made available at all times for inspection by the contracting officer or his authorized representative, and by authorized representatives of the Department of Labor.

(Reporting and recordkeeping requirements in paragraph (b) have been approved by the Office of Management and Budget under control number 1215-0017)

[29 FR 97, Jan. 4, 1964, as amended at 47 FR 145, Jan. 5, 1982]

Sec. 3.5 Payroll deductions permissible without application to or approval of the Secretary of Labor.

Deductions made under the circumstances or in the situations described in the paragraphs of this section may be made without application to and approval of the Secretary of Labor:

(a) Any deduction made in compliance with the requirements of Federal, State, or local law, such as Federal or State withholding income taxes and Federal social security taxes.

(b) Any deduction of sums previously paid to the employee as a bona fide prepayment of wages when such prepayment is made without discount or interest. A bona fide prepayment of wages is considered to have been made only when cash or its equivalent has been advanced to the person employed in such manner as to give him complete freedom of disposition of the advanced funds.

(c) Any deduction of amounts required by court process to be paid to another, unless the deduction is in favor of the contractor, subcontractor, or any affiliated person, or when collusion or collaboration exists.

(d) Any deduction constituting a contribution on behalf of the person employed to funds established by the employer or representatives of employees, or both, for the purpose of providing either from principal or income, or both, medical or hospital care, pensions or annuities on retirement, death benefits, compensation for injuries, illness, accidents, sickness, or disability, or for insurance to provide any of the foregoing, or unemployment benefits, vacation pay, savings accounts, or similar payments for the benefit of employees, their families and dependents:

Provided, however, That the following standards are met:

(1) The deduction is not otherwise prohibited by law;

(2) It is either:

(i) Voluntarily consented to by the employee in writing and in advance of the period in which the work is to be done and such consent is not a condition either for the obtaining of or for the continuation of employment, or

(ii) provided for in a bona fide collective bargaining agreement between the contractor or subcontractor and representatives of its employees;

(3) No profit or other benefit is otherwise obtained, directly or indirectly, by the contractor or subcontractor or any affiliated person in the form of commission, dividend, or otherwise; and

(4) The deductions shall serve the convenience and interest of the employee.

(e) Any deduction contributing toward the purchase of United States Defense Stamps and Bonds when voluntarily authorized by the employee.

(f) Any deduction requested by the employee to enable him to repay loans to or to purchase shares in credit unions organized and operated in accordance with Federal and State credit union statutes.

(g) Any deduction voluntarily authorized by the employee for the making of contributions to governmental or quasi-governmental agencies, such as the American Red Cross.

(h) Any deduction voluntarily authorized by the employee for the making of contributions to Community Chests, United Givers Funds, and similar charitable organizations.

(i) Any deductions to pay regular union initiation fees and membership dues, not including fines or special assessments: Provided, however, That a collective bargaining agreement between the contractor or subcontractor and representatives of its employees provides for such deductions and the deductions are not otherwise prohibited by law.

(j) Any deduction not more than for the ``reasonable cost" of board, lodging, or other facilities meeting the requirements of section 3(m) of the Fair Labor Standards Act of 1938, as amended, and part 531 of this title. When such a deduction is made the additional records required under Sec. 516.25(a) of this title shall be kept.

(k) Any deduction for the cost of safety equipment of nominal value purchased by the employee as his own property for his personal protection in his work, such as safety shoes, safety glasses, safety gloves, and hard hats, if such equipment is not required by law to be furnished by the employer, if such deduction is not violative of the Fair Labor Standards Act or prohibited by other law, if the cost on which the deduction is based does not exceed the actual cost to the employer where the equipment is purchased from him and does not include any direct or indirect monetary return to the employer where the equipment is purchased from a third person, and if the deduction is either

(1) Voluntarily consented to by the employee in writing and in advance of the period in which the work is to be done and such consent is not a condition either for the obtaining of employment or its continuance; or

(2) Provided for in a bona fide collective bargaining agreement between the contractor or subcontractor and representatives of its employees.

[29 FR 97, Jan. 4, 1964, as amended at 36 FR 9770, May 28, 1971]

Sec. 3.6 Payroll deductions permissible with the approval of the Secretary of Labor.

Any contractor or subcontractor may apply to the Secretary of Labor for permission to make any deduction not permitted under Sec. 3.5. The Secretary may grant permission whenever he finds that:

(a) The contractor, subcontractor, or any affiliated person does not make a profit or benefit directly or indirectly from the deduction either in the form of a commission, dividend, or otherwise;

(b) The deduction is not otherwise prohibited by law;

(c) The deduction is either (1) voluntarily consented to by the employee in writing and in advance of the period in which the work is to be done and such consent is not a condition either for the obtaining of employment or its continuance, or (2) provided for in a bona fide collective bargaining agreement between the contractor or subcontractor and representatives of its employees; and

(d) The deduction serves the convenience and interest of the employee.

Sec. 3.7 Applications for the approval of the Secretary of Labor.

Any application for the making of payroll deductions under Sec. 3.6 shall comply with the requirements prescribed in the following paragraphs of this section:

(a) The application shall be in writing and shall be addressed to the Secretary of Labor.

(b) The application need not identify the contract or contracts under which the work in question is to be performed. Permission will be given for deductions on all current and future contracts of the applicant for a period of 1 year. A renewal of permission to make

such payroll deduction will be granted upon the submission of an application which makes reference to the original application, recites the date of the Secretary of Labor's approval of such deductions, states affirmatively that there is continued compliance with the standards set forth in the provisions of Sec. 3.6, and specifies any conditions which have changed in regard to the payroll deductions.

(c) The application shall state affirmatively that there is compliance with the standards set forth in the provisions of Sec. 3.6. The affirmation shall be accompanied by a full statement of the facts indicating such compliance.

(d) The application shall include a description of the proposed deduction, the purpose to be served thereby, and the classes of laborers or mechanics from whose wages the proposed deduction would be made.

(e) The application shall state the name and business of any third person to whom any funds obtained from the proposed deductions are to be transmitted and the affiliation of such person, if any, with the applicant.

[29 FR 97, Jan. 4, 1964, as amended at 36 FR 9771, May 28, 1971]

Sec. 3.8 Action by the Secretary of Labor upon applications.

The Secretary of Labor shall decide whether or not the requested deduction is permissible under provisions of Sec. 3.6; and shall notify the applicant in writing of his decision.

Sec. 3.9 Prohibited payroll deductions.

Deductions not elsewhere provided for by this part and which are not found to be permissible under Sec. 3.6 are prohibited.

Sec. 3.10 Methods of payment of wages.

The payment of wages shall be by cash, negotiable instruments payable on demand, or the additional forms of compensation for which deductions are permissible under this part. No other methods of payment shall be recognized on work subject to the Copeland Act.

Sec. 3.11 Regulations part of contract.

All contracts made with respect to the construction, prosecution, completion, or repair of any public building or public work or building or work financed in whole or in part by loans or grants from the United States covered by the regulations in this part shall expressly bind the contractor or subcontractor to comply with such of the regulations in this part as may be applicable. In this regard, see Sec. 5.5(a) of this subtitle.

[Code of Federal Regulations]
[Title 29, Volume 1]
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TITLE 29--LABOR

PART 5--LABOR STANDARDS PROVISIONS APPLICABLE TO CONTRACTS COVERING FEDERALLY FINANCED AND ASSISTED CONSTRUCTION

Subpart A--Davis-Bacon and Related Acts Provisions and Procedures

Sec. 5.1 Purpose and scope.

Source: 48 FR 19540, Apr. 29, 1983, unless otherwise noted.

Editorial Note: Nomenclature changes to Subpart A appear at 61 FR 19984, May 3, 1996.

(a) The regulations contained in this part are promulgated under the authority conferred upon the Secretary of Labor by Reorganization Plan No. 14 of 1950 and the Copeland Act in order to coordinate the administration and enforcement of the labor standards provisions of each of the following acts by the Federal agencies responsible for their administration and of such additional statutes as may from time to time confer upon the Secretary of Labor additional duties and responsibilities similar to those conferred upon the Secretary of Labor under Reorganization Plan No. 14 of 1950:

1. The Davis-Bacon Act (sec. 1-7, 46 Stat. 1949, as amended; Pub. L. 74-403, 40 U.S.C. 276a-276a-7).
2. Copeland Act (40 U.S.C. 276c).
3. The Contract Work Hours and Safety Standards Act (40 U.S.C. 327-332).
4. National Housing Act (sec. 212 added to c. 847, 48 Stat. 1246, by sec. 14, 53 Stat. 807; 12 U.S.C. 1715c and repeatedly amended).
5. Housing Act of 1950 (college housing) (amended by Housing Act of 1959 to add labor provisions, 73 Stat. 681; 12 U.S.C. 1749a(f)).
6. Housing Act of 1959 (sec. 401(f) of the Housing Act of 1950 as amended by Pub. L. 86-372, 73 Stat. 681; 12 U.S.C. 1701q(c)(3)).
7. Commercial Fisheries Research and Development Act of 1964 (sec. 7, 78 Stat. 199; 16 U.S.C. 779e(b)).
8. Library Services and Construction Act (sec. 7(a), 78 Stat. 13; 20 U.S.C. 355c(a)(4), as amended).
9. National Technical Institute for the Deaf Act (sec. 5(b)(5), 79 Stat. 126; 20 U.S.C. 684(b)(5)).
10. National Foundation on the Arts and Humanities Act of 1965 (sec. 5(k), 79 Stat. 846 as amended; 20 U.S.C. 954(j)).
11. Elementary and Secondary Education Act of 1965 as amended by Elementary and Secondary and other Education Amendments of 1969 (sec. 423 as added by Pub. L. 91-230, title IV, sec. 401(a)(10), 84 Stat. 169, and renumbered sec. 433, by Pub. L. 92-318; title III, sec. 301(a)(1), 86 Stat. 326; 20 U.S.C. 1232(b)). Under the amendment coverage is extended to all programs administered by the Commissioner of Education.
12. The Federal-Aid Highway Acts (72 Stat. 895, as amended by 82 Stat. 821; 23 U.S.C. 113, as amended by the Surface Transportation Assistance Act of 1982, Pub. L. 97-424).
13. Indian Self-Determination and Education Assistance Act (sec. 7, 88 Stat. 2205; 25 U.S.C. 450e).
14. Indian Health Care Improvement Act (sec. 303(b), 90 Stat. 1407; 25 U.S.C. 1633(b)).
15. Rehabilitation Act of 1973 (sec. 306(b)(5) 87 Stat. 384, 29 U.S.C. 776(b)(5)).
16. Comprehensive Employment and Training Act of 1973 (sec. 606, 87 Stat. 880, renumbered sec. 706 by 88 Stat. 1845; 29 U.S.C. 986; also sec. 604, 88 Stat. 1846; 29 U.S.C. 964(b)(3)).
17. State and Local Fiscal Assistance Act of 1972 (sec. 123(a)(6), 86 Stat. 933; 31 U.S.C. 1246(a)(6)).
18. Federal Water Pollution Control Act (sec. 513 of sec. 2, 86 Stat. 894; 33 U.S.C. 1372).
19. Veterans Nursing Home Care Act of 1964 (78 Stat. 502, as amended; 38 U.S.C. 5035(a)(8)).
20. Postal Reorganization Act (sec. 410(b)(4)(C); 84 Stat. 726 as amended; 39 U.S.C. 410(b)(4)(C)).
21. National Visitors Center Facilities Act of 1966 (sec. 110, 32 Stat. 45; 40 U.S.C. 808).
22. Appalachian Regional Development Act of 1965 (sec. 402, 79 Stat. 21; 40 U.S.C. App. 402).
23. Health Services Research, Health Statistics, and Medical Libraries Act of 1974 (sec. 107, see sec. 308(h)(2) thereof, 88 Stat. 370, as amended by 90 Stat. 378; 42 U.S.C. 242m(h)(2)).
24. Hospital Survey and Construction Act, as amended by the Hospital and Medical Facilities Amendments of 1964 (sec. 605(a)(5), 78 Stat. 453; 42 U.S.C. 291e(a)(5)).
25. Health Professions Educational Assistance Act (sec. 303(b), 90 Stat. 2254; 42 U.S.C. 293a(g)(1)(C); also sec. 308a, 90 Stat. 2258, 42 U.S.C. 293a(c)(7)).
26. Nurse Training Act of 1964 (sec. 941(a)(1)(C), 89 Stat. 384; 42 U.S.C. 296a(b)(5)).
27. Heart Disease, Cancer, and Stroke Amendments of 1965 (sec. 904, as added by sec. 2, 79 Stat. 928; 42 U.S.C. 299d(b)(4)).
28. Safe Drinking Water Act (sec. 2(a) see sec. 1450e thereof, 88 Stat. 1691; 42 U.S.C. 300j-9(e)).
29. National Health Planning and Resources Act (sec. 4, see sec. 1604(b)(1)(H), 88 Stat. 2261, 42 U.S.C. 300o-3(b)(1)(H)).
30. U.S. Housing Act of 1937, as amended and recodified (88 Stat. 667; 42 U.S.C. 1437j).

31. Demonstration Cities and Metropolitan Development Act of 1966 (secs. 110, 311, 503, 1003, 80 Stat. 1259, 1270, 1277, 1284; 42 U.S.C. 3310; 12 U.S.C. 1715c; 42 U.S.C. 1437j).

32. Slum clearance program: Housing Act of 1949 (sec. 109, 63 Stat. 419, as amended; 42 U.S.C. 1459).

33. Farm housing: Housing Act of 1964 (adds sec. 516(f) to Housing Act of 1949 by sec. 503, 78 Stat. 797; 42 U.S.C. 1486(f)).

34. Housing Act of 1961 (sec. 707, added by sec. 907, 79 Stat. 496, as amended; 42 U.S.C. 1500c-3).

35. Defense Housing and Community Facilities and Services Act of 1951 (sec. 310, 65 Stat. 307; 42 U.S.C. 1592i).

36. Special Health Revenue Sharing Act of 1975 (sec. 303, see sec. 222(a)(5) thereof, 89 Stat. 324; 42 U.S.C. 2689j(a)(5)).

37. Economic Opportunity Act of 1964 (sec. 607, 78 Stat. 532; 42 U.S.C. 2947).

38. Headstart, Economic Opportunity, and Community Partnership Act of 1974 (sec. 11, see sec. 811 thereof, 88 Stat. 2327; 42 U.S.C. 2992a).

39. Housing and Urban Development Act of 1965 (sec. 707, 79 Stat. 492 as amended; 42 U.S.C. 3107).

40. Older Americans Act of 1965 (sec. 502, Pub. L. 89-73, as amended by sec. 501, Pub. L. 93-29; 87 Stat. 50; 42 U.S.C. 3041a(a)(4)).

41. Public Works and Economic Development Act of 1965 (sec. 712; 79 Stat. 575 as amended; 42 U.S.C. 3222).

42. Juvenile Delinquency Prevention Act (sec. 1, 86 Stat. 536; 42 U.S.C. 3884).

43. New Communities Act of 1968 (sec. 410, 82 Stat. 516; 42 U.S.C. 3909).

44. Urban Growth and New Community Development Act of 1970 (sec. 727(f), 84 Stat. 1803; 42 U.S.C. 4529).

45. Domestic Volunteer Service Act of 1973 (sec. 406, 87 Stat. 410; 42 U.S.C. 5046).

46. Housing and Community Development Act of 1974 (secs. 110, 802(g), 88 Stat. 649, 724; 42 U.S.C. 5310, 1440(g)).

47. Developmentally Disabled Assistance and Bill of Rights Act (sec. 126(4), 89 Stat. 488; 42 U.S.C. 6042(4); title I, sec. 111, 89 Stat. 491; 42 U.S.C. 6063(b)(19)).

48. National Energy Conservation Policy Act (sec. 312, 92 Stat. 3254; 42 U.S.C. 6371j).

49. Public Works Employment Act of 1976 (sec. 109, 90 Stat. 1001; 42 U.S.C. 6708; also sec. 208, 90 Stat. 1008; 42 U.S.C. 6728).

50. Energy Conservation and Production Act (sec. 451(h), 90 Stat. 1168; 42 U.S.C. 6881(h)).

51. Solid Waste Disposal Act (sec. 2, 90 Stat. 2823; 42 U.S.C. 6979).

52. Rail Passenger Service Act of 1970 (sec. 405d, 84 Stat. 1337; 45 U.S.C. 565(d)).

53. Urban Mass Transportation Act of 1964 (sec. 10, 78 Stat. 307; renumbered sec. 13 by 88 Stat. 715; 49 U.S.C. 1609).

54. Highway Speed Ground Transportation Study (sec. 6(b), 79 Stat. 893; 49 U.S.C. 1636(b)).

55. Airport and Airway Development Act of 1970 (sec. 22(b), 84 Stat. 231; 49 U.S.C. 1722(b)).

56. Federal Civil Defense Act of 1950 (50 U.S.C. App. 2281i).

57. National Capital Transportation Act of 1965 (sec. 3(b)(4), 79 Stat. 644; 40 U.S.C. 682(b)(4). Note.-- Repealed December 9, 1969, and labor standards incorporated in sec. 1-1431 of the District of Columbia Code).

58. Model Secondary School for the Deaf Act (sec. 4, 80 Stat. 1027, Pub. L. 89-694, but not in the United States Code).

59. Delaware River Basin Compact (sec. 15.1, 75 Stat. 714, Pub. L. 87-328) (considered a statute for purposes of the plan but not in the United States Code).

60. Energy Security Act (sec. 175(c), Pub. L. 96-294, 94 Stat. 611; 42 U.S.C. 8701 note).

(b) Part 1 of this subtitle contains the Department's procedural rules governing requests for wage determinations and the issuance and use of such wage determinations under the Davis-Bacon Act and its related statutes as listed in that part.

Sec. 5.2 Definitions.

(a) The term Secretary includes the Secretary of Labor, the Deputy Under Secretary for Employment Standards, and their authorized representatives.

(b) The term Administrator means the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, or authorized representative.

(c) The term Federal agency means the agency or instrumentality of the United States which enters into the contract or provides assistance through loan, grant, loan guarantee or insurance, or otherwise, to the project subject to a statute listed in Sec. 5.1.

(d) The term Agency Head means the principal official of the Federal agency and includes those persons duly authorized to act in the behalf of the Agency Head.

(e) The term Contracting Officer means the individual, a duly appointed successor, or authorized representative who is designated and authorized to enter into contracts on behalf of the Federal agency.

(f) The term labor standards as used in this part means the requirements of the Davis-Bacon Act, the Contract Work Hours and Safety Standards Act (other than those relating to safety and health), the Copeland Act, and the prevailing wage provisions of the other statutes listed in Sec. 5.1, and the regulations in parts 1 and 3 of this subtitle and this part.

(g) The term United States or the District of Columbia means the United States, the District of Columbia, and all executive departments, independent establishments, administrative agencies, and instrumentalities of the United States and of the

District of Columbia, including corporations, all or substantially all of the stock of which is beneficially owned by the United States, by the foregoing departments, establishments, agencies, instrumentalities, and including nonappropriated fund instrumentalities.

(h) The term contract means any prime contract which is subject wholly or in part to the labor standards provisions of any of the acts listed in Sec. 5.1 and any subcontract of any tier thereunder, let under the prime contract. A State or local Government is not regarded as a contractor under statutes providing loans, grants, or other Federal assistance in situations where construction is performed by its own employees. However, under statutes requiring payment of prevailing wages to all laborers and mechanics employed on the assisted project, such as the U.S. Housing Act of 1937, State and local recipients of Federal-aid must pay these employees according to Davis-Bacon labor standards.

(i) The terms building or work generally include construction activity as distinguished from manufacturing, furnishing of materials, or servicing and maintenance work. The terms include without limitation, buildings, structures, and improvements of all types, such as bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, pumping stations, heavy generators, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, canals, dredging, shoring, rehabilitation and reactivation of plants, scaffolding, drilling, blasting, excavating, clearing, and landscaping. The manufacture or furnishing of materials, articles, supplies or equipment (whether or not a Federal or State agency acquires title to such materials, articles, supplies, or equipment during the course of the manufacture or furnishing, or owns the materials from which they are manufactured or furnished) is not a building or work within the meaning of the regulations in this part unless conducted in connection with and at the site of such a building or work as is described in the foregoing sentence, or under the United States Housing Act of 1937 and the Housing Act of 1949 in the construction or development of the project.

(j) The terms construction, prosecution, completion, or repair mean the following:

(1) All types of work done on a particular building or work at the site thereof, including work at a facility which is deemed a part of the site of the work within the meaning of (paragraph (l) of this section by laborers and mechanics employed by a construction contractor or construction subcontractor (or, under the United States Housing Act of 1937; the Housing Act of 1949; and the Native American Housing Assistance and Self-Determination Act of 1996, all work done in the construction or development of the project), including without limitation--

(i) Altering, remodeling, installation (where appropriate) on the site of the work of items fabricated off-site;

(ii) Painting and decorating;

(iii) Manufacturing or furnishing of materials, articles, supplies or equipment on the site of the building or work (or, under the United States Housing Act of 1937; the Housing Act of 1949; and the Native American Housing Assistance and Self-Determination Act of 1996 in the construction or development of the project);

(iv)(A) Transportation between the site of the work within the meaning of paragraph (l)(1) of this section and a facility which is dedicated to the construction of the building or work and deemed a part of the site of the work within the meaning of paragraph (l)(2) of this section; and

(B) Transportation of portion(s) of the building or work between a site where a significant portion of such building or work is constructed, which is a part of the site of the work within the meaning of paragraph (l)(1) of this section, and the physical place or places where the building or work will remain.

(2) Except for laborers and mechanics employed in the construction or development of the project under the United States Housing Act of 1937; the Housing Act of 1949; and the Native American Housing Assistance and Self-Determination Act of 1996, and except as provided in paragraph (j)(1)(iv)(A) of this section, the transportation of materials or supplies to or from the site of the work by employees of the construction contractor or a construction subcontractor is not ``construction, prosecution, completion, or repair" (see Building and Construction Trades Department, AFL-CIO v. United States Department of Labor Wage Appeals Board (Midway Excavators, Inc.), 932 F.2d 985 (D.C. Cir. 1991)).

(k) The term public building or public work includes building or work, the construction, prosecution, completion, or repair of which, as defined above, is carried on directly by authority of or with funds of a Federal agency to serve the interest of the general public regardless of whether title thereof is in a Federal agency.

(l) The term site of the work is defined as follows:

(1) The site of the work is the physical place or places where the building or work called for in the contract will remain; and any other site where a significant portion of the building or work is constructed, provided that such site is established specifically for the performance of the contract or project;

(2) Except as provided in paragraph (l)(3) of this section, job headquarters, tool yards, batch plants, borrow pits, etc., are part of the site of the work, provided they are dedicated exclusively, or nearly so, to performance of the contract or project, and provided they are adjacent or virtually adjacent to the site of the work as defined in paragraph (l)(1) of this section;

(3) Not included in the site of the work are permanent home offices, branch plant establishments, fabrication plants, tool yards, etc., of a contractor or subcontractor whose location and continuance in operation are determined wholly without regard to a particular Federal or federally

assisted contract or project. In addition, fabrication plants, batch plants, borrow pits, job headquarters, tool yards, etc., of a commercial or material supplier, which are established by a supplier of materials for the project before opening of bids and not on the site of the work as stated in paragraph (l)(1) of this section, are not included in the site of the work. Such permanent, previously established facilities are not part of the site of the work, even where the operations for a period of time may be dedicated exclusively, or nearly so, to the performance of a contract.

(m) The term laborer or mechanic includes at least those workers whose duties are manual or physical in nature (including those workers who use tools or who are performing the work of a trade), as distinguished from mental or managerial. The term laborer or mechanic includes apprentices, trainees, helpers, and, in the case of contracts subject to the Contract Work Hours and Safety Standards Act, watchmen or guards. The term does not apply to workers whose duties are primarily administrative, executive, or clerical, rather than manual. Persons employed in a bona fide executive, administrative, or professional capacity as defined in part 541 of this title are not deemed to be laborers or mechanics. Working foremen who devote more than 20 percent of their time during a workweek to mechanic or laborer duties, and who do not meet the criteria of part 541, are laborers and mechanics for the time so spent.

(n) The terms apprentice, trainee, and helper are defined as follows:

(1) Apprentice means (i) a person employed and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Bureau, or (ii) a person in the first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice;

(2) Trainee means a person registered and receiving on-the-job training in a construction occupation under a program which has been approved in advance by the U.S. Department of Labor, Employment and Training Administration, as meeting its standards for on-the-job training programs and which has been so certified by that Administration.

(3) These provisions do not apply to apprentices and trainees employed on projects subject to 23 U.S.C. 113 who are enrolled in programs which have been certified by the Secretary of Transportation in accordance with 23 U.S.C. 113(c).

(4) A distinct classification of ``helper" will be issued in wage determinations applicable to work performed on construction projects covered by the labor standards provisions of the Davis-Bacon and Related Acts only where:

(i) The duties of the helper are clearly defined and distinct from those of any other classification on the wage determination;

(ii) The use of such helpers is an established prevailing practice in the area; and

(iii) The helper is not employed as a trainee in an informal training program. A ``helper" classification will be added to wage determinations pursuant to Sec. 5.5(a)(1)(ii)(A) only where, in addition, the work to be performed by the helper is not performed by a classification in the wage determination.

(o) Every person performing the duties of a laborer or mechanic in the construction, prosecution, completion, or repair of a public building or public work, or building or work financed in whole or in part by loans, grants, or guarantees from the United States is employed regardless of any contractual relationship alleged to exist between the contractor and such person.

(p) The term wages means the basic hourly rate of pay; any contribution irrevocably made by a contractor or subcontractor to a trustee or to a third person pursuant to a bona fide fringe benefit fund, plan, or program; and the rate of costs to the contractor or subcontractor which may be reasonably anticipated in providing bona fide fringe benefits to laborers and mechanics pursuant to an enforceable commitment to carry out a financially responsible plan of program, which was communicated in writing to the laborers and mechanics affected. The fringe benefits enumerated in the Davis-Bacon Act include medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing; unemployment benefits; life insurance, disability insurance, sickness insurance, or accident insurance; vacation or holiday pay; defraying costs of apprenticeship or other similar programs; or other bona fide fringe benefits. Fringe benefits do not include benefits required by other Federal, State, or local law.

(q) The term wage determination includes the original decision and any subsequent decisions modifying, superseding, correcting, or otherwise changing the provisions of the original decision. The application of the wage determination shall be in accordance with the provisions of Sec. 1.6 of this title.

[48 FR 19541, Apr. 29, 1983, as amended at 48 FR 50313, Nov. 1, 1983; 55
FR 50149, Dec. 4, 1990; 57 FR 19206, May 4, 1992; 65 FR 69693, Nov. 20,
2000; 65 FR 80278, Dec. 20, 2000]

Sec. 5.5 Contract provisions and related matters.

(a) The Agency head shall cause or require the contracting officer to insert in full in any contract in excess of $2,000 which is entered into for the actual construction, alteration and/or repair, including

painting and decorating, of a public building or public work, or building or work financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the acts listed in Sec. 5.1, the following clauses (or any modifications thereof to meet the particular needs of the agency, Provided, That such modifications are first approved by the Department of Labor):

(1) Minimum wages. (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in Sec. 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the

Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) Withholding. The (write in name of Federal Agency or the loan or grant recipient) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the (Agency) may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records. (i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR **5.5**(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the (write in name of appropriate Federal agency) if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to the (write in name of agency). The payrolls submitted shall set out accurately and completely all of the information required to be maintained under Sec. **5.5**(a)(3)(i) of Regulations, 29 CFR part **5**. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

(B) Each payroll submitted shall be accompanied by a ``Statement of Compliance,'' signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be maintained under Sec. **5.5**(a)(3)(i) of Regulations, 29 CFR part **5** and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the ``Statement of Compliance'' required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the (write the name of the agency) or the Department of

Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and trainees--(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the (write in the name of the Federal agency) may by appropriate instructions require, and

also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility. (i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

(b) Contract Work Hours and Safety Standards Act. The Agency Head shall cause or require the contracting officer to insert the following clauses set forth in paragraphs (b)(1), (2), (3), and (4) of this section in full in any contract in an amount in excess of $100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by Sec. 5.5(a) or 4.6 of part 4 of this title. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the conract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of $10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The (write in the name of the Federal agency or the loan or grant recipient) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

(c) In addition to the clauses contained in paragraph (b), in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in Sec. 5.1, the Agency Head shall cause or require the contracting officer to insert a clause requiring that the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the Agency Head shall cause or require the contracting

officer to insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the (write the name of agency) and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

(The information collection, recordkeeping, and reporting requirements contained in the following paragraphs of this section were approved by the Office of Management and Budget:

Paragraph	OMB Control Number
(a)(1)(ii)(B)	1215-0140
(a)(1)(ii)(C)	1215-0140
(a)(1)(iv)	1215-0140
(a)(3)(i)	1215-0140, 1215-0017
(a)(3)(ii)(A)	1215-0149
(c)	1215-0140, 1215-0017

[48 FR 19540, Apr. 29, 1983, as amended at 51 FR 12265, Apr. 9, 1986; 55 FR 50150, Dec. 4, 1990; 57 FR 28776, June 26, 1992; 58 FR 58955, Nov. 5, 1993; 61 FR 40716, Aug. 5, 1996; 65 FR 69693, Nov. 20, 2000]

Effective Date Note: At 58 FR 58955, Nov. 5, 1993, Sec. 5.5 was amended by suspending paragraph (a)(1)(ii) indefinitely.

Sec. 5.6 Enforcement.

(a)(1) It shall be the responsibility of the Federal agency to ascertain whether the clauses required by Sec. 5.5 have been inserted in the contracts subject to the labor standards provisions of the Acts contained in Sec. 5.1. Agencies which do not directly enter into such contracts shall promulgate the necessary regulations or procedures to require the recipient of the Federal assistance to insert in its contracts the provisions of Sec. 5.5. No payment, advance, grant, loan, or guarantee of funds shall be approved by the Federal agency unless the agency insures that the clauses required by Sec. 5.5 and the appropriate wage determination of the Secretary of Labor are contained in such contracts. Furthermore, no payment, advance, grant, loan, or guarantee of funds shall be approved by the Federal agency after the beginning of construction unless there is on file with the agency a certification by the contractor that the contractor and its subcontractors have complied with the provisions of Sec. 5.5 or unless there is on file with the agency a certification by the contractor that there is a substantial dispute with respect to the required provisions.

(2) Payrolls and Statements of Compliance submitted pursuant to Sec. 5.5(a)(3)(ii) shall be preserved by the Federal agency for a period of 3 years from the date of completion of the contract and shall be produced at the request of the Department of Labor at any time during the 3-year period.

(3) The Federal agency shall cause such investigations to be made as may be necessary to assure compliance with the labor standards clauses required by Sec. 5.5 and the applicable statutes listed in Sec. 5.1. Investigations shall be made of all contracts with such frequency as may be necessary to assure compliance. Such investigations shall include interviews with employees, which shall be taken in confidence, and examinations of payroll data and evidence of registration and certification with respect to apprenticeship and training plans. In making such examinations, particular care shall be taken to determine the correctness of classifications and to determine whether there is a disproportionate employment of laborers and of apprentices or trainees registered in approved programs. Such investigations shall also include evidence of fringe benefit plans and payments thereunder. Complaints of alleged violations shall be given priority.

(4) In accordance with normal operating procedures, the contracting agency may be furnished various investigatory material from the investigation files of the Department of Labor. None of the material, other than computations of back wages and liquidated damages and the summary of back wages due, may be disclosed in any manner to anyone other than Federal officials charged with administering the contract or program providing Federal assistance to the contract, without requesting the permission and views of the Department of Labor.

(5) It is the policy of the Department of Labor to protect the identity of its confidential sources and to prevent an unwarranted invasion of personal privacy. Accordingly, the identity of an employee who makes a written or oral statement as a complaint or in the course of an investigation, as well as portions of the statement which would reveal the employee's identity, shall not be disclosed in any manner to anyone other than Federal officials without the prior consent of the employee. Disclosure of employee statements shall be governed by the provisions of the ``Freedom of Information Act" (5 U.S.C. 552, see 29 CFR part 70) and the ``Privacy Act of 1974" (5 U.S.C. 552a).

(b) The Administrator shall cause to be made such investigations as deemed necessary, in order to obtain compliance with the labor standards provisions of the applicable statutes listed in Sec. 5.1, or to affirm or reject the recommendations by the Agency Head with respect to labor standards matters arising under the statutes listed in Sec. 5.1. Federal agencies, contractors, subcontractors, sponsors, applicants, or owners shall cooperate with any authorized representative of the Department of Labor

in the inspection of records, in interviews with workers, and in all other aspects of the investigations. The findings of such an investigation, including amounts found due, may not be altered or reduced without the approval of the Department of Labor. Where the underpayments disclosed by such an investigation total $1,000 or more, where there is reason to believe that the violations are aggravated or willful (or, in the case of the Davis-Bacon Act, that the contractor has disregarded its obligations to employees and subcontractors), or where liquidated damages may be assessed under the Contract Work Hours and Safety Standards Act, the Department of Labor will furnish the Federal agency an enforcement report detailing the labor standards violations disclosed by the investigation and any action taken by the contractor to correct the violative practices, including any payment of back wages. In other circumstances, the Federal agency will be furnished a letter of notification summarizing the findings of the investigation.

Sec. 5.7 Reports to the Secretary of Labor.

(a) Enforcement reports. (1) Where underpayments by a contractor or subcontractor total less than $1,000, and where there is no reason to believe that the violations are aggravated or willful (or, in the case of the Davis-Bacon Act that the contractor has disregarded its obligations to employees and subcontractors), and where restitution has been effected and future compliance assured, the Federal agency need not submit its investigative findings and recommendations to the Administrator, unless the investigation was made at the request of the Department of Labor. In the latter case, the Federal agency shall submit a factual summary report detailing any violations including any data on the amount of restitution paid, the number of workers who received restitution, liquidated damages assessed under the Contract Work Hours and Safety Standards Act, corrective measures taken (such as ``letters of notice"), and any information that may be necessary to review any recommendations for an appropriate adjustment in liquidated damages under Sec. 5.8.

(2) Where underpayments by a contractor or subcontractor total $1,000 or more, or where there is reason to believe that the violations are aggravated or willful (or, in the case of the Davis-Bacon Act, that the contractor has disregarded its obligations to employees and subcontractors), the Federal agency shall furnish within 60 days after completion of its investigation, a detailed enforcement report to the Administrator.

(b) Semi-annual enforcement reports. To assist the Secretary in fulfilling the responsibilities under Reorganization Plan No. 14 of 1950, Federal agencies shall furnish to the Administrator by April 30 and October 31 of each calendar year semi-annual reports on compliance with and enforcement of the labor standards provisions of the Davis-Bacon Act and its related acts covering the periods of October 1 through March 31 and April 1 through September 30, respectively. Such reports shall be prepared in the manner prescribed in memoranda issued to Federal agencies by the Administrator. This report has been cleared in accordance with FPMR 101-11.11 and assigned interagency report control number 1482-DOL-SA.

(c) Additional information. Upon request, the Agency Head shall transmit to the Administrator such information available to the Agency with respect to contractors and subcontractors, their contracts, and the nature of the contract work as the Administrator may find necessary for the performance of his or her duties with respect to the labor standards provisions referred to in this part.

(d) Contract termination. Where a contract is terminated by reason of violations of the labor standards provisions of the statutes listed in Sec. 5.1, a report shall be submitted promptly to the Administrator and to the Comptroller General (if the contract is subject to the Davis-Bacon Act), giving the name and address of the contractor or subcontractor whose right to proceed has been terminated, and the name and address of the contractor or subcontractor, if any, who is to complete the work, the amount and number of the contract, and the description of the work to be performed.

Sec. 5.8 Liquidated damages under the Contract Work Hours and Safety Standards Act.

(a) The Contract Work Hours and Safety Standards Act requires that laborers or mechanics shall be paid wages at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in any workweek. In the event of violation of this provision, the contractor and any subcontractor shall be liable for the unpaid wages and in addition for liquidated damages, computed with respect to each laborer or mechanic employed in violation of the Act in the amount of $10 for each calendar day in the workweek on which such individual was required or permitted to work in excess of forty hours without payment of required overtime wages. Any contractor of subcontractor aggrieved by the withholding of liquidated damages shall have the right to appeal to the head of the agency of the United States (or the territory of District of Columbia, as appropriate) for which the contract work was performed or for which financial assistance was provided.

(b) Findings and recommendations of the Agency Head. The Agency Head has the authority to review the administrative determination of liquidated damages and to issue a final order affirming the determination. It is not necessary to seek the concurrence of the Administrator but the Administrator shall be advised of the action taken. Whenever the Agency Head finds that a sum of liquidated damages administratively determined to be due is incorrect or that the contractor or subcontractor violated inadvertently the provisions of the Act notwithstanding the exercise of due care upon the part of the

contractor or subcontractor involved, and the amount of the liquidated damages computed for the contract is in excess of $500, the Agency Head may make recommendations to the Secretary that an appropriate adjustment in liquidated damages be made or that the contractor or subcontractor be relieved of liability for such liquidated damages. Such findings with respect to liquidated damages shall include findings with respect to any wage underpayments for which the liquidated damages are determined.

(c) The recommendations of the Agency Head for adjustment or relief from liquidated damages under paragraph (a) of this section shall be reviewed by the Administrator or an authorized representative who shall issue an order concurring in the recommendations, partially concurring in the recommendations, or rejecting the recommendations, and the reasons therefor. The order shall be the final decision of the Department of Labor, unless a petition for review is filed pursuant to part 7 of this title, and the Administrative Review Board in its discretion reviews such decision and order; or, with respect to contracts subject to the Service Contract Act, unless petition for review is filed pursuant to part 8 of this title, and the Administrative Review Board in its discretion reviews such decision and order.

(d) Whenever the Agency Head finds that a sum of liquidated damages administratively determined to be due under section 104(a) of the Contract Work Hours and Safety Standards Act for a contract is $500 or less and the Agency Head finds that the sum of liquidated damages is incorrect or that the contractor or subcontractor violated inadvertently the provisions of the Contract Work Hours and Safety Standards Act notwithstanding the exercise of due care upon the part of the contractor or subcontractor involved, an appropriate adjustment may be made in such liquidated damages or the contractor or subcontractor may be relieved of liability for such liquidated damages without submitting recommendations to this effect or a report to the Department of Labor. This delegation of authority is made under section 105 of the Contract Work Hours and Safety Standards Act and has been found to be necessary and proper in the public interest to prevent undue hardship and to avoid serious impairment of the conduct of Government business.

[48 FR 19541, Apr. 29, 1983, as amended at 51 FR 12265, Apr. 9, 1986; 51
FR 13496, Apr. 21, 1986]

Sec. 5.9 Suspension of funds.

In the event of failure or refusal of the contractor or any subcontractor to comply with the labor standards clauses contained in Sec. 5.5 and the applicable statutes listed in Sec. 5.1, the Federal agency, upon its own action or upon written request of an authorized representative of the Department of Labor, shall take such action as may be necessary to cause the suspension of the payment, advance or guarantee of funds until such time as the violations are discontinued or until sufficient funds are withheld to compensate employees for the wages to which they are entitled and to cover any liquidated damages which may be due.

Sec. 5.10 Restitution, criminal action.

In cases other than those forwarded to the Attorney General of the United States under paragraph (b), of this section, where violations of the labor standards clauses contained in Sec. 5.5 and the applicable statutes listed in Sec. 5.1 result in underpayment of wages to employees, the Federal agency or an authorized representative of the Department of Labor shall request that restitution be made to such employees or on their behalf to plans, funds, or programs for any type of bona fide fringe benefits within the meaning of section 1(b)(2) of the Davis-Bacon Act.

(b) In cases where the Agency Head or the Administrator finds substantial evidence that such violations are willful and in violation of a criminal statute, the matter shall be forwarded to the Attorney General of the United States for prosecution if the facts warrant. In all such cases the Administrator shall be informed simultaneously of the action taken.

Sec. 5.11 Disputes concerning payment of wages.

(a) This section sets forth the procedure for resolution of disputes of fact or law concerning payment of prevailing wage rates, overtime pay, or proper classification. The procedures in this section may be initiated upon the Administrator's own motion, upon referral of the dispute by a Federal agency pursuant to Sec. 5.5(a)(9), or upon request of the contractor or subcontractor(s).

(b)(1) In the event of a dispute described in paragraph (a) of this section in which it appears that relevant facts are at issue, the Administrator will notify the affected contractor and subcontractor(s) (if any), by registered or certified mail to the last known address, of the investigation findings. If the Administrator determines that there is reasonable cause to believe that the contractor and/or subcontractor(s) should also be subject to debarment under the Davis-Bacon Act or Sec. 5.12(a)(1), the letter will so indicate.

(2) A contractor and/or subcontractor desiring a hearing concerning the Administrator's investigative findings shall request such a hearing by letter postmarked within 30 days of the date of the Administrator's letter. The request shall set forth those findings which are in dispute and the reasons therefor, including any affirmative defenses, with respect to the violations and/or debarment, as appropriate.

(3) Upon receipt of a timely request for a hearing, the Administrator shall refer the case to the Chief Administrative Law Judge by Order of Reference, to

which shall be attached a copy of the letter from the Administrator and response thereto, for designation of an Administrative Law Judge to conduct such hearings as may be necessary to resolve the disputed matters. The hearing shall be conducted in accordance with the procedures set forth in 29 CFR part 6.

(c)(1) In the event of a dispute described in paragraph (a) of this section in which it appears that there are no relevant facts at issue, and where there is not at that time reasonable cause to institute debarment proceedings under Sec. 5.12, the Administrator shall notify the contractor and subcontractor(s) (if any), by registered or certified mail to the last known address, of the investigation findings, and shall issue a ruling on any issues of law known to be in dispute. (2)(i) If the contractor and/or subcontractor(s) disagree with the factual findings of the Administrator or believe that there are relevant facts in dispute, the contractor or subcontractor(s) shall so advise the Administrator by letter postmarked within 30 days of the date of the Administrator's letter. In the response, the contractor and/or subcontractor(s) shall explain in detail the facts alleged to be in dispute and attach any supporting documentation.

(ii) Upon receipt of a response under paragraph (c)(2)(i) of this section alleging the existence of a factual dispute, the Administrator shall examine the information submitted. If the Administrator determines that there is a relevant issue of fact, the Administrator shall refer the case to the Chief Administrative Law Judge in accordance with paragraph (b)(3) of this section. If the Administrator determines that there is no relevant issue of fact, the Administrator shall so rule and advise the contractor and subcontractor(s) (if any) accordingly.

(3) If the contractor and/or subcontractor(s) desire review of the ruling issued by the Administrator under paragraph (c)(1) or (2) of this section, the contractor and/or subcontractor(s) shall file a petition for review thereof with the Administrative Review Board within 30 days of the date of the ruling, with a copy thereof the Administrator. The petition for review shall be filed in accordance with part 7 of this title.

(d) If a timely response to the Administrator's findings or ruling is not made or a timely petition for review is not filed, the Administrator's findings and/or ruling shall be final, except that with respect to debarment under the Davis-Bacon Act, the Administrator shall advise the Comptroller General of the Administrator's recommendation in accordance with Sec. 5.12(a)(1). If a timely response or petition for review is filed, the findings and/or ruling of the Administrator shall be inoperative unless and until the decision is upheld by the Administrative Law Judge or the Administrative Review Board.

Sec. 5.12 Debarment proceedings.

(a)(1) Whenever any contractor or subcontractor is found by the Secretary of Labor to be in aggravated or willful violation of the labor standards provisions of any of the applicable statutes listed in Sec. 5.1 other than the Davis-Bacon Act, such contractor or subcontractor or any firm, corporation, partnership, or association in which such contractor or subcontractor has a substantial interest shall be ineligible for a period not to exceed 3 years (from the date of publication by the Comptroller General of the name or names of said contractor or subcontractor on the ineligible list as provided below) to receive any contracts or subcontracts subject to any of the statutes listed in Sec. 5.1.

(2) In cases arising under contracts covered by the Davis-Bacon Act, the Administrator shall transmit to the Comptroller General the names of the contractors or subcontractors and their responsible officers, if any (and any firms in which the contractors or subcontractors are known to have an interest), who have been found to have disregarded their obligations to employees, and the recommendation of the Secretary of Labor or authorized representative regarding debarment. The Comptroller General will distribute a list to all Federal agencies giving the names of such ineligible person or firms, who shall be ineligible to be awarded any contract or subcontract of the United States or the District of Columbia and any contract or subcontract subject to the labor standards provisions of the statutes listed in Sec. 5.1.

(b)(1) In addition to cases under which debarment action is initiated pursuant to Sec. 5.11, whenever as a result of an investigation conducted by the Federal agency or the Department of Labor, and where the Administrator finds reasonable cause to believe that a contractor or subcontractor has committed willful or aggravated violations of the labor standards provisions of any of the statutes listed in Sec. 5.1 (other than the Davis-Bacon Act), or has committed violations of the Davis-Bacon Act which constitute a disregard of its obligations to employees or subcontractors under section 3(a) thereof, the Administrator shall notify by registered or certified mail to the last known address, the contractor or subcontractor and its responsible officers, if any (and any firms in which the contractor or subcontractor are known to have a substantial interest), of the finding. The Administrator shall afford such contractor or subcontractor and any other parties notified an opportunity for a hearing as to whether debarment action should be taken under paragraph (a)(1) of this section or section 3(a) of the Davis-Bacon Act. The Administrator shall furnish to those notified a summary of the investigative findings. If the contractor or subcontractor or any other parties notified wish to request a hearing as to whether debarment action should be taken, such a request shall be made by letter postmarked within 30 days of the date of the letter from the Administrator, and shall set forth any findings which are in dispute and the reasons therefor, including any affirmative defenses to be raised. Upon receipt of such request for a hearing, the Administrator shall refer the case to the Chief Administrative Law Judge by Order of Reference, to

which shall be attached a copy of the letter from the Administrator and the response thereto, for designation of an Administrative Law Judge to conduct such hearings as may be necessary to determine the matters in dispute. In considering debarment under any of the statutes listed in Sec. 5.1 other than the Davis-Bacon Act, the Administrative Law Judge shall issue an order concerning whether the contractor or subcontractor is to be debarred in accordance with paragraph (a)(1) of this section. In considering debarment under the Davis-Bacon Act, the Administrative Law Judge shall issue a recommendation as to whether the contractor or subcontractor should be debarred under section 3(a) of the Act.

(2) Hearings under this section shall be conducted in accordance with 29 CFR part 6. If no hearing is requested within 30 days of receipt of the letter from the Administrator, the Administrator's findings shall be final, except with respect to recommendations regarding debarment under the Davis-Bacon Act, as set forth in paragraph (a)(2) of this section.

(c) Any person or firm debarred under Sec. 5.12(a)(1) may in writing request removal from the debarment list after six months from the date of publication by the Comptroller General of such person or firm's name on the ineligible list. Such a request should be directed to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210, and shall contain a full explanation of the reasons why such person or firm should be removed from the ineligible list. In cases where the contractor or subcontractor failed to make full restitution to all underpaid employees, a request for removal will not be considered until such underpayments are made. In all other cases, the Administrator will examine the facts and circumstances surrounding the violative practices which caused the debarment, and issue a decision as to whether or not such person or firm has demonstrated a current responsibility to comply with the labor standards provisions of the statutes listed in Sec. 5.1, and therefore should be removed from the ineligible list. Among the factors to be considered in reaching such a decision are the severity of the violations, the contractor or subcontractor's attitude towards compliance, and the past compliance history of the firm. In no case will such removal be effected unless the Administrator determines after an investigation that such person or firm is in compliance with the labor standards provisions applicable to Federal contracts and Federally assisted construction work subject to any of the applicable statutes listed in Sec. 5.1 and other labor statutes providing wage protection, such as the Service Contract Act, the Walsh-Healey Public Contracts Act, and the Fair Labor Standards Act. If the request for removal is denied, the person or firm may petition for review by the Administrative Review Board pursuant to 29 CFR part 7.

(d)(1) Section 3(a) of the Davis-Bacon Act provides that for a period of three years from date of publication on the ineligible list, no contract shall be awarded to any persons or firms placed on the list as a result of a finding by the Comptroller General that such persons or firms have disregarded obligations to employees and subcontractors under that Act, and further, that no contract shall be awarded to ``any firm, corporation, partnership, or association in which such persons or firms have an interest." Paragraph (a)(1) of this section similarly provides that for a period not to exceed three years from date of publication on the ineligible list, no contract subject to any of the statutes listed in Sec. 5.1 shall be awarded to any contractor or subcontractor on the ineligible list pursuant to that paragraph, or to ``any firm, corporation, partnership, or association" in which such contractor or subcontractor has a ``substantial interest." A finding as to whether persons or firms whose names appear on the ineligible list have an interest (or a substantial interest, as appropriate) in any other firm, corporation, partnership, or association, may be made through investigation, hearing, or otherwise.

(2)(i) The Administrator, on his/her own motion or after receipt of a request for a determination pursuant to paragraph (d)(3) of this section may make a finding on the issue of interest (or substantial interest, as appropriate).

(ii) If the Administrator determines that there may be an interest (or substantial interest, as appropriate), but finds that there is insufficient evidence to render a final ruling thereon, the Administrator may refer the issue to the Chief Administrative Law Judge in accordance with paragraph (d)(4) of this section.

(iii) If the Administrator finds that no interest (or substantial interest, as appropriate) exists, or that there is not sufficient information to warrant the initiation of an investigation, the requesting party, if any, will be so notified and no further action taken.

(iv)(A) If the Administrator finds that an interest (or substantial interest, as appropriate) exists, the person or firm affected will be notified of the Administrator's finding (by certified mail to the last known address), which shall include the reasons therefor, and such person or firm shall be afforded an opportunity to request that a hearing be held to render a decision on the issue.

(B) Such person or firm shall have 20 days from the date of the Administrator's ruling to request a hearing. A detailed statement of the reasons why the Administrator's ruling is in error, including facts alleged to be in dispute, if any, shall be submitted with the request for a hearing.

(C) If no hearing is requested within the time mentioned in paragraph (d)(2)(iv)(B) of this section, the Administrator's finding shall be final and the Administrator shall so notify the Comptroller General. If a hearing is requested, the ruling of the Administrator shall be inoperative unless and until the administrative law judge or the Administrative Review

Board issues an order that there is an interest (or substantial interest, as appropriate).

(3)(i) A request for a determination of interest (or substantial interest, as appropriate), may be made by any interested party, including contractors or prospective contractors and associations of contractor's representatives of employees, and interested Government agencies. Such a request shall be submitted in writing to the Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210.

(ii) The request shall include a statement setting forth in detail why the petitioner believes that a person or firm whose name appears on the debarred bidders list has an interest (or a substantial interest, as appropriate) in any firm, corporation, partnership, or association which is seeking or has been awarded a contract of the United States or the District of Columbia, or which is subject to any of the statutes listed in Sec. 5.1. No particular form is prescribed for the submission of a request under this section.

(4) Referral to the Chief Administrative Law Judge. The Administrator, on his/her own motion under paragraph (d)(2)(ii) of this section or upon a request for hearing where the Administrator determines that relevant facts are in dispute, will by order refer the issue to the Chief Administrative Law Judge, for designation of an Administrative Law Judge who shall conduct such hearings as may be necessary to render a decision solely on the issue of interest (or substantial interest, as appropriate). Such proceedings shall be conducted in accordance with the procedures set forth at 29 CFR part 6.

(5) Referral to the Administrative Review Board. If the person or firm affected requests a hearing and the Administrator determines that relevant facts are not in dispute, the Administrator will refer the issue and the record compiled thereon to the Administrative Review Board to render a decision solely on the issue of interest (or substantial interest, as appropriate). Such proceeding shall be conducted in accordance with the procedures set forth at 29 CFR part 7.

[48 FR 19541, Apr. 29, 1983, as amended at 48 FR 50313, Nov. 1, 1983]

Sec. 5.13 Rulings and interpretations.

All questions relating to the application and interpretation of wage determinations (including the classifications therein) issued pursuant to part 1 of this subtitle, of the rules contained in this part and in parts 1 and 3, and of the labor standards provisions of any of the statutes listed in Sec. 5.1 shall be referred to the Administrator for appropriate ruling or interpretation. The rulings and interpretations shall be authoritative and those under the Davis-Bacon Act may be relied upon as provided for in section 10 of the Portal-to-Portal Act of 1947 (29 U.S.C. 259). Requests for such rulings and interpretations should be addressed to the Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210.

Sec. 5.14 Variations, tolerances, and exemptions from parts 1 and 3 of this subtitle and this part.

The Secretary of Labor may make variations, tolerances, and exemptions from the regulatory requirements of this part and those of parts 1 and 3 of this subtitle whenever the Secretary finds that such action is necessary and proper in the public interest or to prevent injustice and undue hardship. Variations, tolerances, and exemptions may not be made from the statutory requirements of any of the statutes listed in Sec. 5.1 unless the statute specifically provides such authority.

Sec. 5.15 Limitations, variations, tolerances, and exemptions under the Contract Work Hours and Safety Standards Act.

(a) General. Upon his or her own initiative or upon the request of any Federal agency, the Secretary of Labor may provide under section 105 of the Contract Work Hours and Safety Standards Act reasonable limitations and allow variations, tolerances, and exemptions to and from any or all provisions of that Act whenever the Secretary finds such action to be necessary and proper in the public interest to prevent injustice, or undue hardship, or to avoid serious impairment of the conduct of Government business. Any request for such action by the Secretary shall be submitted in writing, and shall set forth the reasons for which the request is made.

(b) Exemptions. Pursuant to section 105 of the Contract Work Hours and Safety Standards Act, the following classes of contracts are found exempt from all provisions of that Act in order to prevent injustice, undue hardship, or serious impairment of Government business:

(1) Contract work performed in a workplace within a foreign country or within territory under the jurisdiction of the United States other than the following: A State of the United States; the District of Columbia; Puerto Rico; the Virgin Islands; Outer Continental Shelf lands defined in the Outer Continental Shelf Lands Act (ch. 345, 67 Stat. 462); American Samoa; Guam; Wake Island; Eniwetok Atoll; Kwajalein
Atoll; and Johnston Island.

(2) Agreements entered into by or on behalf of the Commodity Credit Corporation providing for the storing in or handling by commercial warehouses of wheat, corn, oats, barley, rye, grain sorghums, soybeans, flaxseed, rice, naval stores, tobacco, peanuts, dry beans, seeds, cotton, and wool.

(3) Sales of surplus power by the Tennessee Valley Authority to States, counties, municipalities, cooperative organization of citizens or farmers, corporations and other individuals pursuant to section 10 of the Tennessee Valley Authority Act of 1933 (16 U.S.C. 8311).

(c) Tolerances. (1) The ``basic rate of pay" under section 102 of the Contract Work Hours and Safety Standards Act may be computed as an hourly equivalent to the rate on which time-and-one-half overtime compensation may be computed and paid under section 7 of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 207), as interpreted in part 778 of this title. This tolerance is found to be necessary and proper in the public interest in order to prevent undue hardship.

(2) Concerning the tolerance provided in paragraph (c)(1) of this section, the provisions of section 7(d)(2) of the Fair Labor Standards Act and Sec. 778.7 of this title should be noted. Under these provisions, payments for occasional periods when no work is performed, due to vacations, and similar causes are excludable from the ``regular rate" under the Fair Labor Standards Act. Such payments, therefore, are also excludable from the ``basic rate" under the Contract Work Hours and Safety Standards Act.

(3) See Sec. 5.8(c) providing a tolerance subdelegating authority to the heads of agencies to make appropriate adjustments in the assessment of liquidated damages totaling $500 or less under specified circumstances.

(4)(i) Time spent in an organized program of related, supplemental instruction by laborers or mechanics employed under bona fide apprenticeship or training programs may be excluded from working time if the criteria prescribed in paragraphs (c)(4)(ii) and (iii) of this section are met.

(ii) The apprentice or trainee comes within the definition contained in Sec. 5.2(n).

(iii) The time in question does not involve productive work or performance of the apprentice's or trainee's regular duties.

(d) Variations. (1) In the event of failure or refusal of the contractor or any subcontractor to comply with overtime pay requirements of the Contract Work Hours and Safety Standards Act, if the funds withheld by Federal agencies for the violations are not sufficient to pay fully both the unpaid wages due laborers and mechanics and the liquidated damages due the United States, the available funds shall be used first to compensate the laborers and mechanics for the wages to which they are entitled (or an equitable portion thereof when the funds are not adequate for this purpose); and the balance, if any, shall be used for the payment of liquidated damages.

(2) In the performance of any contract entered into pursuant to the provisions of 38 U.S.C. 620 to provide nursing home care of veterans, no contractor or subcontractor under such contract shall be deemed in violation of section 102 of the Contract Work Hours and Safety Standards Act by virtue of failure to pay the overtime wages required by such section for work in excess of 40 hours in the workweek to any individual employed by an establishment which is an institution primarily engaged in the care of the sick, the aged, or the mentally ill or defective who reside on the premises if, pursuant to an agreement or understanding arrived at between the employer and the employee before performance of the work, a work period of 14 consecutive days is accepted in lieu of the workweek of 7 consecutive days for the purpose of overtime compensation and if such individual receives compensation for employment in excess of 8 hours in any workday and in excess of 80 hours in such 14-day period at a rate not less than 1\1/2\ times the regular rate at which the individual is employed, computed in accordance with the requirements of the Fair Labor Standards Act of 1938, as amended.

(3) Any contractor or subcontractor performing on a government contract the principal purpose of which is the furnishing of fire fighting or suppression and related services, shall not be deemed to be in violation of section 102 of the Contract Work Hour and Safety Standards Act for failing to pay the overtime compensation required by section 102 of the Act in accordance with the basic rate of pay as defined in paragraph (c)(1) of this section, to any pilot or copilot of a fixed-wing or rotary-wing aircraft employed on such contract if:

(i) Pursuant to a written employment agreement between the contractor and the employee which is arrived at before performance of the work.

(A) The employee receives gross wages of not less than $300 per week regardless of the total number of hours worked in any workweek, and

(B) Within any workweek the total wages which an employee receives are not less than the wages to which the employee would have been entitled in that workweek if the employee were paid the minimum hourly wage required under the contract pursuant to the provisions of the Service Contract Act of 1965 and any applicable wage determination issued thereunder for all hours worked, plus an additional premium payment of one-half times such minimum hourly wage for all hours worked in excess of 40 hours in the workweek;

(ii) The contractor maintains accurate records of the total daily and weekly hours of work performed by such employee on the government contract. In the event these conditions for the exemption are not met, the requirements of section 102 of the Contract Work Hours and Safety Standards Act shall be applicable to the contract from the date the contractor or subcontractor fails to satisfy the conditions until completion of the contract.

(Reporting and recordkeeping requirements in paragraph (d)(2) have been approved by the Office of Management and Budget under control numbers 1215-0140 and 1215-0017. Reporting and recordkeeping requirements in paragraph (d)(3)(ii) have been approved by the Office of Management and Budget under control number 1215-0017)

[48 FR 19541, Apr. 29, 1983, as amended at 51 FR 12265, Apr. 9, 1986; 61 FR 40716, Aug. 5, 1996]

Sec. 5.16 Training plans approved or recognized by the Department of Labor prior to August 20, 1975.

(a) Notwithstanding the provisions of Sec. 5.5(a)(4)(ii) relating to the utilization of trainees on Federal and federally assisted construction, no contractor shall be required to obtain approval of a training program which, prior to August 20, 1975, was approved by the Department of Labor for purposes of the Davis-Bacon and Related Acts, was established by agreement of organized labor and management and therefore recognized by the Department, and/or was recognized by the Department under Executive Order 11246, as amended. A copy of the program and evidence of its prior approval, if applicable shall be submitted to the Employment and Training Administration, which shall certify such prior approval or recognition of the program. In every other respect, the provisions of Sec. 5.5(a)(4)(ii)--including those relating to registration of trainees, permissible ratios, and wage rates to be paid--shall apply to these programs.

(b) Every trainee employed on a contract executed on and after August 20, 1975, in one of the above training programs must be individually registered in the program in accordance with Employment and Training Administration procedures, and must be paid at the rate specified in the program for the level of progress. Any such employee listed on the payroll at a trainee rate who is not registered and participating in a program certified by ETA pursuant to this section, or approved and certified by ETA pursuant to Sec. 5.5(a)(4)(ii), must be paid the wage rate determined by the Secretary of Labor for the classification of work actually performed. The ratio of trainees to journeymen shall not be greater than permitted by the terms of the program.

(c) In the event a program which was recognized or approved prior to August 20, 1975, is modified, revised, extended, or renewed, the changes in the program or its renewal must be approved by the Employment and Training Administration before they may be placed into effect.

Sec. 5.17 Withdrawal of approval of a training program.

If at any time the Employment and Training Administration determines, after opportunity for a hearing, that the standards of any program, whether it is one recognized or approved prior to August 20, 1975, or a program subsequently approved, have not been complied with, or that such a program fails to provide adequate training for participants, a contractor will no longer be permitted to utilize trainees at less than the predetermined rate for the classification of work actually performed until an acceptable program is approved.

Sec. 5.20 Scope and significance of this subpart.

Source: 29 FR 13465, Sept. 30, 1964, unless otherwise noted.

The 1964 amendments (Pub. L. 88-349) to the Davis-Bacon Act require, among other things, that the prevailing wage determined for Federal and federally-assisted construction include: (a) The basic hourly rate of pay; and (b) the amount contributed by the contractor or subcontractor for certain fringe benefits (or the cost to them of such benefits). The purpose of this subpart is to explain the provisions of these amendments. This subpart makes available in one place official interpretations of the fringe benefits provisions of the Davis-Bacon Act. These interpretations will guide the Department of Labor in carrying out its responsibilities under these provisions. These interpretations are intended also for the guidance of contractors, their associations, laborers and mechanics and their organizations, and local, State and Federal agencies, who may be concerned with these provisions of the law. The interpretations contained in this subpart are authoritative and may be relied upon as provided for in section 10 of the Portal-to-Portal Act of 1947 (29 U.S.C. 359). The omission to discuss a particular problem in this subpart or in interpretations supplementing it should not be taken to indicate the adoption of any position by the Secretary of Labor with respect to such problem or to constitute an administrative interpretation, practice, or enforcement policy. Questions on matters not fully covered by this subpart may be referred to the Secretary for interpretation as provided in Sec. 5.12.

Sec. 5.22 Effect of the Davis-Bacon fringe benefits provisions.

The Davis-Bacon Act and the prevailing wage provisions of the related statutes listed in Sec. 1.1 of this subtitle confer upon the Secretary of Labor the authority to predetermine, as minimum wages, those wage rates found to be prevailing for corresponding classes of laborers and mechanics employed on projects of a character similar to the contract work in the area in which the work is to be performed. See paragraphs (a) and (b) of Sec. 1.2 of this subtitle. The fringe benefits amendments enlarge the scope of this authority by including certain bona fide fringe benefits within the meaning of the terms ``wages", ``scale of wages", ``wage rates", ``minimum wages" and ``prevailing wages", as used in the Davis-Bacon Act.

Sec. 5.23 The statutory provisions.

The fringe benefits provisions of the 1964 amendments to the Davis-Bacon Act are, in part, as follows:

(b) As used in this Act the term ``wages", ``scale of wages", ``wage rates", ``minimum wages", and ``prevailing wages" shall include--

(1) The basic hourly rate of pay; and
(2) The amount of–
(A) The rate of contribution irrevocably made by a contractor or subcontractor to a trustee or to a third person pursuant to a fund, plan, or program; and
(B) The rate of costs to the contractor or subcontractor which may be reasonably anticipated in providing benefits to laborers and mechanics pursuant to an enforceable commitment to carry out a financially responsible plan or program which was communicated in writing to the laborers and mechanics affected, for medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing, for unemployment benefits, life insurance, disability and sickness insurance, or accident insurance, for vacation and holiday pay, for defraying costs of apprenticeship or other similar programs, or for other bona fide fringe benefits, but only where the contractor or subcontractor is not required by other Federal, State, or local law to provide any of such benefits * * *.

Sec. 5.24 The basic hourly rate of pay.

``The basic hourly rate of pay" is that part of a laborer's or mechanic's wages which the Secretary of Labor would have found and included in wage determinations prior to the 1964 amendments. The Secretary of Labor is required to continue to make a separate finding of this portion of the wage. In general, this portion of the wage is the cash payment made directly to the laborer or mechanic. It does not include fringe benefits.

Sec. 5.25 Rate of contribution or cost for fringe benefits.

(a) Under the amendments, the Secretary is obligated to make a separate finding of the rate of contribution or cost of fringe benefits. Only the amount of contributions or costs for fringe benefits which meet the requirements of the act will be considered by the Secretary. These requirements are discussed in this subpart.
(b) The rate of contribution or cost is ordinarily an hourly rate, and will be reflected in the wage determination as such. In some cases, however, the contribution or cost for certain fringe benefits may be expressed in a formula or method of payment other than an hourly rate. In such cases, the Secretary may in his discretion express in the wage determination the rate of contribution or cost used in the formula or method or may convert it to an hourly rate of pay whenever he finds that such action would facilitate the administration of the Act. See Sec. 5.5(a)(1)(i) and (iii).

Sec. 5.26 "* * * contribution irrevocably made * * * to a trustee or to a third person".

Under the fringe benefits provisions (section 1(b)(2) of the Act) the amount of contributions for fringe benefits must be made to a trustee or to a third person irrevocably. The ``third person" must be one who is not affiliated with the contractor or subcontractor. The trustee must assume the usual fiduciary responsibilities imposed upon trustees by applicable law. The trust or fund must be set up in such a way that in no event will the contractor or subcontractor be able to recapture any of the contributions paid in or any way divert the funds to his own use or benefit. Although contributions made to a trustee or third person pursuant to a benefit plan must be irrevocably made, this does not prevent return to the contractor or subcontractor of sums which he had paid in excess of the contributions actually called for by the plan, as where such excess payments result from error or from the necessity of making payments to cover the estimated cost of contributions at a time when the exact amount of the necessary contributions under the plan is not yet ascertained. For example, a benefit plan may provide for definite insurance benefits for employees in the event of the happening of a specified contingency such as death, sickness, accident, etc., and may provide that the cost of such definite benefits, either in full or any balance in excess of specified employee contributions, will be borne by the contractor or subcontractor. In such a case the return by the insurance company to the contractor or subcontractor of sums paid by him in excess of the amount required to provide the benefits which, under the plan, are to be provided through contributions by the contractor or subcontractor, will not be deemed a recapture or diversion by the employer of contributions made pursuant to the plan. (See Report of the Senate Committee on Labor and Public Welfare, S. Rep. No. 963, 88th Cong., 2d Sess., p. 5.)

Sec. 5.27 "* * * fund, plan, or program".

The contributions for fringe benefits must be made pursuant to a fund, plan or program (sec. 1(b)(2)(A) of the act). The phrase ``fund, plan, or program" is merely intended to recognize the various types of arrangements commonly used to provide fringe benefits through employer contributions. The phrase is identical with language contained in section 3(1) of the Welfare and Pension Plans Disclosure Act. In interpreting this phrase, the Secretary will be guided by the experience of the Department in administering the latter statute. (See Report of Senate Committee on Labor and Public Welfare, S. Rep. No. 963, 88th Cong., 2d Sess., p. 5.)

Sec. 5.28 Unfunded plans.

(a) The costs to a contractor or subcontractor which may be reasonably anticipated in providing benefits of the types described in the act pursuant to an enforceable commitment to carry out a financially responsible plan or program, are considered fringe benefits within the meaning of the act (see 1(b)(2)(B)

of the act). The legislative history suggests that these provisions were intended to permit the consideration of fringe benefits meeting, among others, these requirements and which are provided from the general assets of a contractor or subcontractor. (Report of the House Committee on Education and Labor, H. Rep. No. 308, 88th Cong., 1st Sess., p. 4.)

(b) No type of fringe benefit is eligible for consideration as a so-called unfunded plan unless:

(1) It could be reasonably anticipated to provide benefits described in the act;

(2) It represents a commitment that can be legally enforced;

(3) It is carried out under a financially responsible plan or program; and

(4) The plan or program providing the benefits has been communicated in writing to the laborers and mechanics affected. (See S. Rep. No. 963, p. 6.)

(c) It is in this manner that the act provides for the consideration of unfunded plans or programs in finding prevailing wages and in ascertaining compliance with the Act. At the same time, however, there is protection against the use of this provision as a means of avoiding the act's requirements. The words ``reasonably anticipated" are intended to require that any unfunded plan or program be able to withstand a test which can perhaps be best described as one of actuarial soundness. Moreover, as in the case of other fringe benefits payable under the act, an unfunded plan or program must be ``bona fide" and not a mere simulation or sham for avoiding compliance with the act. (See S. Rep. No. 963, p. 6.) The legislative history suggests that in order to insure against the possibility that these provisions might be used to avoid compliance with the act, the committee contemplates that the Secretary of Labor in carrying out his responsibilities under Reorganization Plan No. 14 of 1950, may direct a contractor or subcontractor to set aside in an account assets which, under sound actuarial principles, will be sufficient to meet the future obligation under the plan. The preservation of this account for the purpose intended would, of course, also be essential. (S. Rep. No. 963, p. 6.) This is implemented by the contractual provisions required by Sec. 5.5(a)(1)(iv).

Sec. 5.29 Specific fringe benefits.

(a) The act lists all types of fringe benefits which the Congress considered to be common in the construction industry as a whole. These include the following: Medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing, unemployment benefits, life insurance, disability and sickness insurance, or accident insurance, vacation and holiday pay, defrayment of costs of apprenticeship or other similar programs, or other bona fide fringe benefits, but only where the contractor or subcontractor is not required by other Federal, State, or local law to provide any of such benefits.

(b) The legislative history indicates that it was not the intent of the Congress to impose specific standards relating to administration of fringe benefits. It was assumed that the majority of fringe benefits arrangements of this nature will be those which are administered in accordance with requirements of section 302(c)(5) of the National Labor Relations Act, as amended (S. Rep. No. 963, p. 5).

(c) The term ``other bona fide fringe benefits" is the so-called ``open end" provision. This was included so that new fringe benefits may be recognized by the Secretary as they become prevailing. It was pointed out that a particular fringe benefit need not be recognized beyond a particular area in order for the Secretary to find that it is prevailing in that area. (S. Rep. No. 963, p. 6).

(d) The legislative reports indicate that, to insure against considering and giving credit to any and all fringe benefits, some of which might be illusory or not genuine, the qualification was included that such fringe benefits must be ``bona fide" (H. Rep. No. 308, p. 4; S. Rep. No. 963, p. 6). No difficulty is anticipated in determining whether a particular fringe benefit is ``bona fide" in the ordinary case where the benefits are those common in the construction industry and which are established under a usual fund, plan, or program. This would be typically the case of those fringe benefits listed in paragraph (a) of this section which are funded under a trust or insurance program. Contractors may take credit for contributions made under such conventional plans without requesting the approval of the Secretary of Labor under Sec. 5.5(a)(1)(iv).

(e) Where the plan is not of the conventional type described in the preceding paragraph, it will be necessary for the Secretary to examine the facts and circumstances to determine whether they are ``bona fide" in accordance with requirements of the act. This is particularly true with respect to unfunded plans. Contractors or subcontractors seeking credit under the act for costs incurred for such plans must request specific permission from the Secretary under Sec. 5.5(a)(1)(iv).

(f) The act excludes fringe benefits which a contractor or subcontractor is obligated to provide under other Federal, State, or local law. No credit may be taken under the act for the payments made for such benefits. For example, payment for workmen's compensation insurance under either a compulsory or elective State statute are not considered payments for fringe benefits under the Act. While each situation must be separately considered on its own merits, payments made for travel, subsistence or to industry promotion funds are not normally payments for fringe benefits under the Act. The omission in the Act of any express reference to these payments, which are common in the construction industry, suggests that these payments should not normally be regarded as bona fide fringe benefits under the Act.

Sec. 5.30 Types of wage determinations.

(a) When fringe benefits are prevailing for various classes of laborers and mechanics in the area of proposed construction, such benefits are includable in any Davis-Bacon wage determination. Illustrations, contained in paragraph (c) of this section, demonstrate some of the different types of wage determinations which may be made in such cases.

(b) Wage determinations of the Secretary of Labor under the act do not include fringe benefits for various classes of laborers and mechanics whenever such benefits do not prevail in the area of proposed construction. When this occurs the wage determination will contain only the basic hourly rates of pay, that is only the cash wages which are prevailing for the various classes of laborers and mechanics. An illustration of this situation is contained in paragraph (c) of this section.

(c) Illustrations:

OMITTED

(It should be noted this format is not necessarily in the exact form in which determinations will issue; it is for illustration only.)

Sec. 5.31 Meeting wage determination obligations.

(a) A contractor or subcontractor performing work subject to a Davis-Bacon wage determination may discharge his minimum wage obligations for the payment of both straight time wages and fringe benefits by paying in cash, making payments or incurring costs for ``bona fide" fringe benefits of the types listed in the applicable wage determination or otherwise found prevailing by the Secretary of Labor, or by a combination thereof.

(b) A contractor or subcontractor may discharge his obligations for the payment of the basic hourly rates and the fringe benefits where both are contained in a wage determination applicable to his laborers or mechanics in the following ways:

(1) By paying not less than the basic hourly rate to the laborers or mechanics and by making the contributions for the fringe benefits in the wage determinations, as specified therein. For example, in the illustration contained in paragraph (c) of Sec. 5.30, the obligations for ``painters" will be met by the payment of a straight time hourly rate of not less than $3.90 and by contributing not less than at the rate of 15 cents an hour for health and welfare benefits, 10 cents an hour for pensions, and 20 cents an hour for vacations; or

(2) By paying not less than the basic hourly rate to the laborers or mechanics and by making contributions for ``bona fide" fringe benefits in a total amount not less than the total of the fringe benefits required by the wage determination. For example, the obligations for ``painters" in the illustration in paragraph (c) of Sec. 5.30 will be met by the payment of a straight time hourly rate of not less than $3.90 and by contributions of not less than a total of 45 cents an hour for ``bona fide" fringe benefits; or

(3) By paying in cash directly to laborers or mechanics for the basic hourly rate and by making an additional cash payment in lieu of the required benefits. For example, where an employer does not make payments or incur costs for fringe benefits, he would meet his obligations for ``painters" in the illustration in paragraph (c) of Sec. 5.30, by paying directly to the painters a straight time hourly rate of not less than $4.35 ($3.90 basic hourly rate plus 45 cents for fringe benefits); or

(4) As stated in paragraph (a) of this section, the contractor or subcontractor may discharge his minimum wage obligations for the payment of straight time wages and fringe benefits by a combination of the methods illustrated in paragraphs (b)(1) thru (3) of this section. Thus, for example, his obligations for ``painters" may be met by an hourly rate, partly in cash and partly in payments or costs for fringe benefits which total not less than $4.35 ($3.90 basic hourly rate plus 45 cents for fringe benefits). The payments in such case may be $4.10 in cash and 25 cents in payments or costs in fringe benefits. Or, they may be $3.75 in cash and 60 cents in payments or costs for fringe benefits.

[30 FR 13136, Oct. 15, 1965]

Sec. 5.32 Overtime payments.

(a) The act excludes amounts paid by a contractor or subcontractor for fringe benefits in the computation of overtime under the Fair Labor Standards Act, the Contract Work Hours and Safety Standards Act, and the Walsh-Healey Public Contracts Act whenever the overtime provisions of any of these statutes apply concurrently with the Davis-Bacon Act or its related prevailing wage statutes. It is clear from the legislative history that in no event can the regular or basic rate upon which premium pay for overtime is calculated under the aforementioned Federal statutes be less than the amount determined by the Secretary of Labor as the basic hourly rate (i.e. cash rate) under section 1(b)(1) of the Davis-Bacon Act. (See S. Rep. No. 963, p. 7.) Contributions by employees are not excluded from the regular or basic rate upon which overtime is computed under these statutes; that is, an employee's regular or basic straight-time rate is computed on his earnings before any deductions are made for the employee's contributions to fringe benefits. The contractor's contributions or costs for fringe benefits may be excluded in computing such rate so long as the exclusions do not reduce the regular or basic rate below the basic hourly rate contained in the wage determination.

(b) The legislative report notes that the phrase ``contributions irrevocably made by a contractor or subcontractor to a trustee or to a third person pursuant to a fund, plan, or program" was added to the bill in Committee. This language in essence

conforms to the overtime provisions of section 7(d)(4) of the Fair Labor Standards Act, as amended. The intent of the committee was to prevent any avoidance of overtime requirements under existing law. See H. Rep. No. 308, p. 5.

(c)(1) The act permits a contractor or subcontractor to pay a cash equivalent of any fringe benefits found prevailing by the Secretary of Labor. Such a cash equivalent would also be excludable in computing the regular or basic rate under the Federal overtime laws mentioned in paragraph (a). For example, the W construction contractor pays his laborers or mechanics $3.50 in cash under a wage determination of the Secretary of Labor which requires a basic hourly rate of $3 and a fringe benefit contribution of 50 cents. The contractor pays the 50 cents in cash because he made no payments and incurred no costs for fringe benefits. Overtime compensation in this case would be computed on a regular or basic rate of $3.00 an hour. However, in some cases a question of fact may be presented in ascertaining whether or not a cash payment made to laborers or mechanics is actually in lieu of a fringe benefit or is simply part of their straight time cash wage. In the latter situation, the cash payment is not excludable in computing overtime compensation. Consider the examples set forth in paragraphs (c)(2) and (3) of this section.

(2) The X construction contractor has for some time been paying $3.25 an hour to a mechanic as his basic cash wage plus 50 cents an hour as a contribution to a welfare and pension plan. The Secretary of Labor determines that a basic hourly rate of $3 an hour and a fringe benefit contribution of 50 cents are prevailing. The basic hourly rate or regular rate for overtime purposes would be $3.25, the rate actually paid as a basic cash wage for the employee of X, rather than the $3 rate determined as prevailing by the Secretary of Labor.

(3) Under the same prevailing wage determination, discussed in paragraph (c)(2) of this section, the Y construction contractor who has been paying $3 an hour as his basic cash wage on which he has been computing overtime compensation reduces the cash wage to $2.75 an hour but computes his costs of benefits under section 1(b)(2)(B) as $1 an hour. In this example the regular or basic hourly rate would continue to be $3 an hour. See S. Rep. No. 963, p. 7.

APPENDIX D

DAVIS-BACON AND RELATED ACTS

Davis-Bacon and Related Acts

[Public -- No. 403-74th Congress] [S.3303]

AN ACT

To amend the Act approved March 3, 1931, relating to the rate of wages for laborers and mechanics employed by contractors and subcontractors on public buildings.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Act entitled "An Act relating to the rate of wages for laborers and mechanics employed on public building of the United States and the District of Columbia by contractors or subcontractors, and for other purposes," approved March 3, 1931, is amended to read as follows:

"That the advertised specifications for every contract in excess of $2,000, to which the United States or the District of Columbia is a party, for construction, alteration, and/or repair, including painting and decorating, of public buildings or public works of the United States or the District of Columbia within the geographical limits of the States of the Union or the District of Columbia, and which requires or involves the employment of mechanics and/or laborers shall contain a provision stating the minimum wages to be paid various classes of laborers and mechanics which shall be based upon the wages that will be determined by the Secretary of Labor to be prevailing for the corresponding classes of laborers and mechanics employed on projects of a character similar to the contract work in the city, town, village, or other civil subdivision of the State in which the work is to be performed, or in the District of Columbia if the work is to be performed there; and every contract based upon these specifications shall contain a stipulation that the contractor or his subcontractor shall pay all mechanics and laborers employed directly upon the site of the work, unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account, the full amounts accrued at time of payment, computed at wage rates not less than those stated in the advertised specifications, regardless of any contractual relationship which may be alleged to exist between the contractor or subcontractor and such laborers and mechanics, and that the scale of wages to be paid shall be posted by the contractor in a prominent and easily accessible place at the site of the work; and the further stipulation that there may be withheld from the contractor so much of accrued payments as may be considered necessary by the contracting officer to pay to laborers and mechanics employed by the contractor or any subcontractor on the work the difference between the rates of wages required by the contract to be paid laborers and mechanics on the work and the rates of wages received by such laborers and mechanics and not refunded to the contractor, subcontractors, or their agents.

"Sec.2. Every contract within the scope of this Act shall contain the further provision that in the event it is found by the contracting officer that any laborer or mechanic employed by the contractor or any subcontractor directly on the site of the work covered by the contract has been or is being paid a rate of wages less than the rate of wages required by the contract to be paid as aforesaid, the Government may, by written notice to the contractor, terminate his right to proceed with the work or such part of the work as to which there has been a failure to pay said required wages and to prosecute the work to completion by contract or otherwise, and the contractor and his sureties shall be liable to the Government for any excess costs occasioned the Government thereby.

"Sec. 3. (a) The Comptroller General of the United States is authorized and directed to pay directly to laborers and mechanics from any accrued payments withheld under the

terms of the contract any wages found to be due laborers and mechanics pursuant to this Act; and the Comptroller General of the United States is further authorized and is directed to distribute a list to all departments of the Government giving the names of persons or firms whom he has found to have disregarded their obligations to employees and subcontractors. No contract shall be awarded to the persons or firms appearing on this list or to any firm, corporation, partnership, or association in which such persons or firms have an interest until three years have elapsed from the date of publication of the list containing the names of such persons or firms.

"(b) If the accrued payments withheld under the terms of the contract, as aforesaid, are insufficient to reimburse all the laborers and mechanics with respect to whom there has been a failure to pay the wages required pursuant to this Act, such laborers and mechanics shall have the right of action and/or of intervention against the contractor and his sureties conferred by law upon persons furnishing labor or materials, and in such proceedings it shall be no defense that such laborers and mechanics accepted or agreed to accept less than the required rate of wages or voluntarily made refunds.

"Sec. 4. This Act shall not be construed to supersede or impair any authority otherwise granted by Federal law to provide for the establishment of specific wage rates.

"Sec. 5. This Act shall take effect thirty days after its passage, but shall not affect any contract then existing or any contract that may thereafter be entered into pursuant to invitations for bids that are outstanding at the time of the passage of this Act.

"Sec. 6. In the event of a national emergency the President is authorized to suspend the provisions of this Act.

"Sec. 7. The funds appropriated and made available by the Emergency Relief Appropriation Act of 1935 (Public Resolution Numbered 11, 74th Congress), are hereby made available for the fiscal year ending June 30, 1936, to the Department of Labor for expenses of the administration of this Act."
Approved, August 30, 1935.

AMENDMENT

[Public-No. 633 -- 76th Congress]
[Chapter 373-3d Session]
[S.3650]

AN ACT

To require the payment of prevailing rates of wages on Federal public works in Alaska and Hawaii.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 1 of the Act entitled "An Act relating to the rate of wages for laborers and mechanics employed on public buildings of the United States and the District of Columbia by contractors and subcontractors, and for other purposes," approved March 3, 1931 (46 Stat. 1494), as amended, is further amended by striking out the words "States of the Union or the District of Columbia" and inserting in lieu thereof :"States of the Union, the Territory of Alaska, the Territory of Hawaii, or the District of Columbia";and by striking out the words "or other civil subdivision of the State" and inserting in lieu thereof "or other civil subdivision of the State, or the Territory of Alaska or the Territory of Hawaii".

Sec 2. The amendments made by this Act shall take effect on the thirtieth day after the date of enactment of this Act, but shall not affect any contract in existence on such effective date of made thereafter pursuant to invitations for bids outstanding on the date of enactment of this Act.
Approved, June 15, 1940.
[40 U.S. Code, sec. 276a-7]

The fact that any contract authorized by any Act is entered into without regard to section 5 of Title 41, or upon a cost-plus-a-fixed-fee basis or otherwise without advertising for proposals, shall not be construed to render inapplicable the provisions of sections 276a to 276a-5 of this title, if such Act would otherwise be applicable to such contract. March 23, 1941, 12 noon, ch. 26, 55 Stat. 53; Aug. 21, 1941, ch. 395, 55 Stat. 658.

AMENDMENT

[Public -No. 88-349-88th Congress]
July 2, 1964
[H.R. 6041]

AN ACT

To amend the prevailing wage section of the Davis-Bacon Act, as amended; and related sections of the Federal Airport Act, as amended; and the National Housing Act as amended

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 1 of the Act of March 3, 1931, as amended (46 Stat. 1494, as amended; 40 U.S.C. 276a), is hereby amended by designating the language of the present section as subsection (a) and by adding at the end thereof the following new subsection (b); "(b) As used in sections the term `wages`, `scale of wages`, `wage rates`, `minimum wages`, and `prevailing wages` shall include -
"(1) the basic hourly rate of pay; and
"(2) the amount of –

(A) the rate of contribution irrevocably made by a contractor or subcontractor to a trustee or to a third person pursuant to a fund, plan, or program; and
B) the rate of costs to the contractor or subcontractor which may be reasonably anticipated in providing benefits to laborers and mechanics pursuant to an enforceable commitment to carry out a financially responsible plan or program which was communicated in writing to the laborers and mechanics affected,for medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing, for unemployment benefits, life insurance, disability and sickness insurance, or accident insurance, for vacation and holiday pay, for defraying costs of apprenticeship or other similar programs, or for other bona fide fringe benefits, but only where the contractor or subcontractor is not required by other Federal, State, or local law to provide any of such benefits: *Provided,* That the obligation of a contractor or subcontractor to make payment in accordance with the prevailing wage determination of the Secretary of Labor, insofar as this Act and other Acts incorporating this Act by reference are concerned may be discharged by the making of payments in cash, by the making of contributions of a type referred to in paragraph (2)(A), or by the assumption of an enforceable commitment to bear the costs of a plan or program of a type referred to in paragraph (2)(B), or any combination thereof, where the aggregate of any such payments, contributions, and costs is not less than the rate of pay described in paragraph (1) plus the amount referred to in

paragraph (2). "In determining the overtime pay to which the laborer or mechanic is entitled under any Federal law, his regular or basic hourly rate of pay (or other alternative rate upon which premium rate of overtime compensation is computed) shall be deemed to be the rate computed under paragraph (1), except that where the amount of payments, contributions, or costs incurred with respect to him exceeds the prevailing wage applicable to him underthis Act, such regular or basic hourly rate of pay (or such other alternative rate) shall be arrived at by deducting from the amount of payments, contributions, or costs actually incurred with respect to him, the amount of contributions or costs of the types described in paragraph (2) actually incurred with respect to him, or the amount determined under paragraph (2) but not actually paid, whichever amount is the greater."

Sec. 2. Section 15(b) of the Federal Airport Act, as amended (60 Stat. 178, as amended; 49 U.S.C. 1114(b)) is hereby amended by inserting the words "in accordance with the Davis- Bacon Act, as amended (40 U.S.C. 276a -- 276a-5)" after the words "Secretary of Labor,".

Sec. 3. Section 212(a) of the National Housing Act, as amended (53 Stat. 208, as amended; 12 U.S.C. 1715 (c)), is hereby amended by inserting the words "in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a -- 276a-5)," after the words "Secretary of Labor,".

Sec 4. The amendments made by this Act shall take effect on the ninetieth day after the date of enactment of this Act, but shall not affect any contract in existence on such effective date or made thereafter pursuant to invitations for bids outstanding on such effective date and the rate of payments specified by section 1(b)(2) of the Act of March 3, 1931, as amended by this Act, shall, during a period of two hundred and seventy days after such effective date, become effective only in those cases and reasonable classes of cases as the Secretary of Labor, acting as rapidly as practicable to make such rates of payments fully effective, shall by rule or regulation provide.`

APPENDIX E

LABOR COMPLIANCE FORMS

APPENDIX E
Los Angeles County Metropolitan Transportation Authority (Metro)
Labor Compliance (LC) Document Submittal Schedule

Document Name	LC FORM	Applicable Entity	Frequency	Due Date	Note
Certified Payroll Report (CPR) with Statement of Compliance	A1 A2	Prime and Subs	Weekly	Within 10 / 7 days of end of payroll period	Within 10 days from the end of the payroll period, or in the case of Federally-assisted contracts, within 7 days of the end of the payroll period.
Owner-Operator Listing with Statement of Compliance	B1 B2	Prime and Subs	Weekly	Within 10 days of end of payroll period	All Owner-Operators are to be reported on this form.
Fringe Benefit Statement	C	Prime and Subs	As Needed	With first CPR submitted, and as information changes	In the event fringe benefits are paid in cash to workers, contractor should indicate "fringe benefits paid in cash" across this form.
Certificate Appointing Payroll Officer	D	Prime and Subs	As Needed	With first CPR submitted, and as information changes	This form should be submitted with the first CPR and each time a new Payroll Officer is appointed.
Prevailing Wage Certification	E	Prime and Subs	One-Time Filing	With first CPR submitted	This form is to be submitted by each contractor with the first CPR submitted.
Training Fund Contribution Report (CAC 2 Form)	F	Prime and Subs	Monthly	Within 15 days of end of reporting month	All training contributions on behalf of employees to the California Apprenticeship Council shall be submitted on this form.

APPENDIX E
Los Angeles County Metropolitan Transportation Authority (Metro)
Labor Compliance (LC) Document Submittal Schedule

Document Name	LC FORM	Applicable Entity	Frequency	Due Date	Note
Public Works Contract Award Information (DAS 140)	G	Prime and Subs	One-time filing	Within ten (10) days of the date of the execution of the Prime Contract or Subcontract	Original to be submitted to Appropriate Apprenticeship Committee(s) and a copy sent to Metro.
Employer's Monthly Report to Trustees	H	Prime and Subs	Monthly	Within 15 days of end of reporting month	Submitted by the prime contractor and each subcontractor that pays benefits into an approved plan(s).
CC257 (Monthly Employment Utilization Report) with Instructions	I1 I2	Prime and Subs	Monthly	Within 5 days of end of reporting month	The prime contractor shall submit a report for its aggregate Project work force. Each subcontractor shall separately submit a report for its aggregate Project work force.
List of Contractor and Subcontractors Working on Project	J	Prime	Monthly	Within 15 days of end of reporting month	All information listed on form is required.
Verified statement of journeyman and apprentice hours	Not Provided	Prime and Subs	One-Time Filing	Within 60 days after concluding work on the contract	Each contractor and subcontractor shall submit to the Metro and to the apprenticeship program(s) a verified statement of the journeyman and apprentice hours performed on the contract.

PUBLIC WORKS PAYROLL REPORTING FORM

Los Angeles County Metropolitan Transportation Authority

HC347 (Metro LC FORM A1)

NAME OF CONTRACTOR: OR SUBCONTRACTOR ☐	CONTRACTOR'S LICENSE # SPECIALTY LICENSE #	ADDRESS
PAYROLL NO.	FOR WEEK ENDING:	EMPLOYER FEDERAL ID NUMBER:	PROJECT OR CONTRACT # PROJECT LOCATION

(1) NAME, ADDRESS, AND SOCIAL SECURITY NUMBER OF EMPLOYEE	(2) NO. OF WITH HOLDING EXEMPT	(3) WORK CLASSIFI-CATION		(4) DAY AND DATE SUN	MON	TUES	WED	THU	FRI	SAT	(5) TOTAL HOURS	(6) HOURLY RATE OF PAY	(7) GROSS AMOUNT EARNED THIS PROJECT	ALL PROJECTS	(8) DEDUCTIONS, CONTRIBUTIONS AND PAYMENTS FED TAX	FICA SOC SEC	STATE TAX	SDI	VAC/ HOL	HEALTH WELF	PEN.	(9) NET WAGES PAID FOR WEEK	CHECK NO.
				HOURS WORKED EACH DAY																			
			S																				
			O												TRAIN	FUND ADMIN	DUES	TRAV/ SUBS	SAVING	OTHER	TOTAL DEDUCT.		
			S										THIS PROJECT	ALL PROJECT	FED TAX	FICA SOC SEC	STATE TAX	SDI	VAC/ HOL	HEALTH WELF	PEN.		
			O												TRAIN	FUND ADMIN	DUES	TRAV/ SUBS	SAVING	OTHER	TOTAL DEDUCT.		
			S										THIS PROJECT	ALL PROJECT	FED TAX	FICA SOC SEC	STATE TAX	SDI	VAC/ HOL	HEALTH WELF	PEN.		
			O												TRAIN	FUND ADMIN	DUES	TRAV/ SUBS	SAVING	OTHER	TOTAL DEDUCT.		
			S										THIS PROJECT	ALL PROJECT	FED TAX	FICA SOC SEC	STATE TAX	SDI	VAC/ HOL	HEALTH WELF	PEN.		
			O												TRAIN	FUND ADMIN	DUES	TRAV/ SUBS	SAVING	OTHER	TOTAL DEDUCT.		
			S										THIS PROJECT	ALL PROJECT	FED TAX	FICA SOC SEC	STATE TAX	SDI	VAC/ HOL	HEALTH WELF	PEN.		
			O												TRAIN	FUND ADMIN	DUES	TRAV/ SUBS	SAVING	OTHER	TOTAL DEDUCT.		

S=STRAIGHT TIME O=OVERTIME SDI=STATE DISABILITY INSURANCE

STATEMENT OF COMPLIANCE

Date_____

I, _____ do hereby certify under penalty of perjury:
(Name of signatory party) / (Title)

(1) That I pay or supervise the payment of the persons employed by_____
(Contractor or subcontractor)
on the _____, that during the payroll period commencing on the
(Building or work)
_____ day of _____, 20____ and ending the _____ day of _____, 20____ , all persons employed on said project 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 _____ from
(Contractor or subcontractor)
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, as described below:

_____

_____

(2) That any payrolls otherwise under this contract 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 contained in any wage determination incorporated into the contract; that the classifications 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:

(a) WHERE FRINGE BENEFITS ARE PAID TO APPROVED PLANS, FUNDS OR PROGRAMS

_____In addition to the basic hourly wage rates paid to each laborer or mechanic listed in the above referenced payroll, payments of fringe benefits as listed in the contract have been or will be made to appropriate programs for the benefit of such employees, except as noted in Section 4(c) below.

(b) WHERE FRINGE BENEFITS ARE PAID IN CASH

_____Each laborer or mechanic listed in the above referenced payroll has been paid as indicated on the payroll, an amount not less than the sum of the applicable basic hourly wage rate plus the amount of the required fringe benefits as listed in the contract, except as noted in Section 4(c) below:

(c) EXCEPTIONS

EXCEPTION(CRAFT)	EXPLANATION
Remarks:	
Name and Title:	Signature:

On Federally funded projects, permissible deductions are defined in Regulations, Part 3(29 CFR Subtitle A), issued by the Secretary of Labor under the Copeland Act, as amended (48 Stat. 948.63, Stat. 108, 72 Stat. 967; Stat. 357; 40 U.S.C. 276c).
Also, the willful falsification on any of the above statements may subject the contractor or subcontractor to civil or criminal prosecution. See Section 1001 of Title 16 and Section 231 or Title 31 of the United States Code.

LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY

OWNER-OPERATOR LISTING (Metro LC FORM B1)

NAME OF CONTRACTOR EMPLOYING OWNER-OPERATOR (S)			ADDRESS											
PAYROLL NO.	FOR THE WEEK ENDING		PROJECT AND LOCATION								CONTRACT NO.			
NAME, ADDRESS, SOCIAL SECURITY NO. AND CONTRACTOR'S LICENSE NO. OF OWNER OPERATOR (IF ANY)	WORK CLASSIFICATION	DESCRIPTION OF EQUIPMENT	TRUCK, CAL T. NO. AND/ OR EQUIP. LICENSE NO.	DAY AND DATE								TOTAL WEEKLY HOURS	HOURLY RATE OF PAY	GROSS PAYMENT EARNED	CHECK NO.
					S	M	T	W	T	F	S				
				O											
				S											
				O											
				S											
				O											
				S											
				O											
				S											
				O											
				S											
				O											
				S											
				O											
				S											

Note: CERTIFICATION WILL BE ACCEPTED ONLY FROM THE CONTRACTOR EMPLOYING THE OWNER OPERATOR. IT WILL NOT BE ACCEPTED FROM THE OWNER OPERATOR HIMSELF.

LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY

OWNER-OPERATOR LISTING STATEMENT OF COMPLIANCE

Date

I, _____ do hereby certify under penalty of perjury:
(Name of signatory party) (Title)

(1) That all the information in this report is true and correct;

(2) That I pay or supervise the payment of the persons reported as Owners-Operators by _____
(Contractor or Subcontractor)
on the _____ , that during the payroll period commencing on the _____ day of _____
(Project)
20 _____ and ending the _____ day of _____, 20 _____, all persons employed on said project have been paid their full weekly wages earned, that no rebates have or will be made either directly or indirectly to or on behalf of said _____ from the full weekly wages earned by any person and that no deductions have been made either directly or
(Contractor or Subcontractor) indirectly from the full wages earned by any person, other than permissible deductions, as described below:

(3) That any payrolls otherwise under this contract 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 wages contained in any wage determination incorporated into the contract; that the classifications set forth therein for each laborer or mechanic conform with the work he or she performed.

(4) That any apprentices employed in the above period are duly registered in a bona fide apprenticeship program registered with a State apprenticeship agency.

(5) That :
(a) WHERE FRINGE BENEFITS ARE PAID TO APPROVED PLANS, FUNDS OR PROGRAMS
_____ In addition to the basic hourly wage rates paid to each laborer or mechanic listed in the above referenced payroll, payment of fringe benefits as listed in the contract have been or will be made to appropriate programs for the benefit of such employees, except as noted in Section 5 (c) below.

(b) WHERE FRINGE BENEFITS ARE PAID IN CASH
_____ Each laborer or mechanic listed in the above referenced payroll has been paid as indicated on the payroll, an amount not less than the sum of the applicable basic hourly wage rate plus the amount of the required fringe benefits as listed in the contract except as noted in Section 5 (c) below:

(c) EXCEPTIONS

EXCEPTION (CRAFT)	EXPLANATION

Remarks:

Name and Title	Signature

On federally-funded projects, permissible deductions are defined in Regulations, Part 3 (29 CFR Subtitle A), issued by the Secretary of Labor under the Copeland Act, as amended (48 Stat. 948; 63 Stat. 108; 72 Stat. 967; 76 Stat. 357; 40 U.S. C. 276c). The willful falsification of any of the above statements may subject the contractor or subcontractor to civil or criminal prosecution (Section 1001 of Title 118 and Section 231 of Title 31 of the United States Code.)

(Metro LC FORM B2)

LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY

Fringe Benefits Statement

Contract/Proposal Number:	Project Name:	Date:
	INSTRUCTIONS: This form is to be submitted with the first certified payroll. In order that the proper Fringe Benefit rates can be used for checking payrolls or applied to Force Account work which may be done on the above contract the hourly rates for fringe benefits, subsistence and/or travel allowance payment (as required by collective bargaining agreements) made for employees on the various classes of work are tabulated below. THIS DOCUMENT CONTAINS PERSONAL INFORMATION AND, PURSUANT TO CIVIL CODE 1796.21, IT SHALL BE KEPT CONFIDENTIAL IN ORDER TO PROTECT AGAINST UNAUTHORIZED DISCLOSURE.	

Classification:	Effective Date:	Subsistence or Travel Pay:
Health and Welfare $	Trust Fund Paid To: (Name)	
	Address:	
Pension $	Trust Fund Paid To: (Name)	
	Address:	
Vacation/Holiday $	Trust Fund Paid To: (Name)	
	Address:	
Training and/or Other $	Trust Fund Paid To: (Name)	
	Address:	

Classification:	Effective Date:	Subsistence or Travel Pay:
Health and Welfare $	Trust Fund Paid To: (Name)	
	Address:	
Pension $	Trust Fund Paid To: (Name)	
	Address:	
Vacation/Holiday $	Trust Fund Paid To: (Name)	
	Address:	
Training and/or Other $	Trust Fund Paid To: (Name)	
	Address:	

Classification:	Effective Date:	Subsistence or Travel Pay:
Health and Welfare $	Trust Fund Paid To: (Name)	
	Address:	
Pension $	Trust Fund Paid To: (Name)	
	Address:	
Vacation/Holiday $	Trust Fund Paid To: (Name)	
	Address:	
Training and/or Other $	Trust Fund Paid To: (Name)	
	Address:	

Supplemental statement must be submitted during the progress of work should a change in rate of any of the classifications be made.
I certify that the Fringe Benefits Payments are made to the approved plans fund or programs as listed above.

Submitted(Contractor/Subcontractor)	By(Name and Title)	Signature

CERTIFICATE FROM CONTRACTOR APPOINTING OFFICER OR EMPLOYEE TO SUPERVISE PAYMENT OF EMPLOYEES

Project Name_____ Date_____

Location_____ Project Number_____

(I) (We) hereby certify that (I am)(We are)(the prime contractor)(a subcontractor) for

_____

(Specify trade: "General Construction," "Plumbing," "Roofing," etc.)

in connection with construction of the above referenced Los Angeles County Metropolitan Transportation Authority (LACMTA) project, and that (I)(we) have appointed _____

whose signature appears below, to supervise the payment of (my)(our) employees beginning _____, 20_____. That he/she is in a position to have knowledge of the facts set forth in the payroll documents and in the statement of full compliance required by the Copeland Anti-Kickback Act which he/she is to execute with (my)(our) full authority and approval until such time as (I)(we) submit to the LACMTA a new certificate appointing some other person for the purposes here-in above stated.

_____ _____

(Identifying Signature of Appointee) (Name of Appointee)

_____

(Name of Firm or Corporation)

Attest (if required)

By: _____ By:

_____

(Signature) (Signature)

_____ _____

(Title) (Title)

NOTE: This certificate must be executed by an authorized officer of a corporation or by a member of a partnership, and shall be executed prior to and be submitted with the first payroll. Should the appointee change, a new certificate must accompany the first payroll which the new appointee executes a Statement of Compliance required by the Copeland Anti-Kickback Act.

CONTRACTOR'S CERTIFICATION CONCERNING LABOR STANDARD AND PREVAILING WAGE REQUIREMENTS

TO (Appropriate Recipient)	DATE:
C/O	PROJECT NO/ CONTRACT NO.
	PROJECT NAME

1. The undersigned; having executed a contract with_____ for the construction of the above-identified project, acknowledge that:

(a) The Labor standards provisions are included in the aforementioned contract;

(b) Correction of any infractions of the aforementioned conditions, including infractions by any of his subcontractors and any lower tier subcontractors is his responsibility.

2. Contractor certifies that:

(a) Neither the contractor nor any firm partnership or association in which the contractor has substantial interest in is designated as an ineligible contractor by the Comptroller General of the United States pursuant to section 5.6(b) of the Regulations of the Secretary of Labor, Part 5 (29 CFR, Part 5) or pursuant to Section 3(a) of the Davis-Bacon Act, as amended (40 U.S.C. 276a-2(a)).

(b) No part of the aforementioned contract has been or will be subcontracted to any subcontractor or any firm, corporation, partnership or association in which such subcontractor has a substantial interest is designated as an ineligible contractor pursuant to any of the aforementioned regulatory or statutory provisions.

3. Contractor agrees to obtain and forward to the aforementioned recipient within ten days after the execution of any subcontract, including those executed by his subcontractors, a Subcontractor's Certification Concerning Labor Standards and Prevailing Wage Requirements executed by the subcontractors.

4. Contractor certifies that:

(a) The legal name and the business address of the undersigned are:

(b) The undersigned is:

(1) A SINGLE PROPRIETORSHIP:	(3) A CORPORATION ORGANIZED IN THE STATE OF:
(2) A PARTNERSHIP:	(4) OTHER ORGANIZATION (describe):

(c) The name, title and address of the owners, partners or officers of the undersigned are:

NAME	TITLE	ADDRESS

(d) The names and addresses of all other persons, both natural and corporate, having a substantial interest in the undersigned, and the nature of the interests are (if none, so state):

NAME	ADDRESS	NATURE OF INTEREST

(e) The names, addresses and trade classifications of all other building construction contractors in which the undersigned has a substantial interest are (if none, so state):

NAME	ADDRESS	TRADE CLASSIFICATION

_____
(CONTRACTOR)

Date_____

By: _____

WARNING

U.S Criminal Code, Section 1010, Title 18, U.S.C, provides in part: "Whoever...makes, passes utters or publishes any statement, knowing the same to be false...shall be fined not more than $5000.00 or imprisoned not more than two years or both."

State of California
Department of Industrial Relations
California Apprenticehip 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 NMBER
	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)

CLASSIFICATIONS) 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
			Total	$0.00

SIGNATURE PLEASE TYPE OR PRINT YOUR NAME	DATE
TITLE	AREA CODE & TELEPHONE NUMBER

This form should be sent to the Apprenticeship Committee of the craft or trade in the area of the site of the public work. If you have any questions as to the address of the appropriate Apprenticeship Committee, contact the nearest office of the Division of Apprenticeship Standards (DAS). Consult your telephone directory under California, State of, Industrial Relations, for the DAS office in your area. *Do not send this form to the Division of Apprenticeship Standards.*

PUBLIC WORKS
CONTRACT AWARD INFORMATION

NAME OF CONTRACTOR	CONTRACTOR'S STATE LICENSE NO.
CONTRACTOR'S MAILING ADDRESS - NUMBER & STREET, CITY, ZIP CODE	AREA CODE & TELEPHONE NO.
NAME & LOCATION OF PUBLIC WORKS PROJECT	DATE OF CONTRACT AWARD
	DATE OF EXPECTED OR ACTUAL START OF PROJECT
NAME & ADDRESS OF PUBLIC AGENCY AWARDING CONTRACT Los Angeles County Metropolitan Transportation Authority One Gateway Plaza Los Angeles, CA 90012-2952	ESTIMATED NUMBER OF JOURNEYMEN HOURS

APPRENTICES

OCCUPATION OF APPRENTICE	NUMBER TO BE EMPLOYED	APPROXIMATE DATES TO BE EMPLOYED

CHECK ONE OF THE BOXES BELOW

Please Note: Your election of options below is not to be deemed a request for the immediate dispatch of apprentices. Contractors must make a separate request for actual dispatch.

Box 1 ☐ **We will request dispatch of apprentice(s) for this job in accordance with Section 230.1 (A), California Code of Regulations. We voluntarily choose to comply with the applicable Apprenticeship Committee Standards for the duration of this job only, with regard to training apprentices and to the payment of training contributions.**

Box 2 ☐ **We will request dispatch of apprentice(s) for this job in accordance with Section 230.1 (A), California Code of Regulations, but do not agree to be bound by the applicable Apprenticeship Committee Standards in training the apprentices; instead, we agree to employe and train apprentice(s) in accordance with the California Apprenticeship Council regulations, including Section 230.1 of the California Code of Regulations, governing employement of apprentices on public work projects.**

Box 3 ☐ **We are already approved to train apprentices by the applicable Apprenticeship Committee and we will employ and train under the Standards. We will request dispatch of apprentices for this job in accordance with Section 230.1 (A), California Code of Regulations.**

Box 4 ☐ **We will not request the dispatch of apprentice(s) since apprentices are not required on this job under the provisions of California Labor Code Section 1777.5, because:**

_____

_____

Signature _____

Typed Name _____

Title _____ ***Date*** _____

EMPLOYER'S MONTHLY REPORT TO TRUSTEES

1 THIS REPORT IS TO COVER HOURS FOR THE MONTH OF:	ACCOUNT NO.	I do hereby certify under penalty of perjury that the employees listed below constitute all the employees that I am required to make payments to the Trust. Furthermore I certify that the hours shown for each employee are the total hours to which he/she w
LICENSE NO.		
EMPLOYER NAME AND ADDRESS If the above information is incorrect, please		Signed by: ________ Title: ________

2 COMPUTATION OF CONTRIBUTIONS

6 TOTAL HOURS ON ALL PAGES	A. VACATION/DUES	B. PENSION	C. TRAINING AND RETRAINING	D. HEALTH AND WELFARE	E. INDUSTRY	
	_______PER HOUR $	_______PER HOUR $	_______PER HOUR $	_______PER HOUR $	_______PER HOUR $	MAKE ONE CHECK FOR TOTAL AMOUNTS OF COLUMNS A, B, C, D & E
LIQUIDATED DAMAGES						
TOTAL DUE EACH TRUST	$	$	$	$	$	

3 EMPLOYEE'S NAME	INITIALS 1ST 2ND	4 SOCIAL SECURITY NO.	5 HOURS

IMPORTANT: SOCIAL SECURITY NUMBER MUST BE FILLED TO ASSURE PROPER CREDIT.

TOTAL HOURS THIS PAGE ________

7 IMPORTANT THIS REPORT MUST BE FILED EVEN THOUGH NO EMPLOYEES WORKED THIS MONTH.

☐ NO EMPLOYEES WORKED THIS MONTH. PLEASE CONTINUE MAILING REPORT FORMS.

☐ TRANSFER TO INACTIVE STATUS. WE HAD NO EMPLOYEE TO REPORT THIS MONTH AND DO NOT ANTICIPATE HIRING ANY IN THE NEAR FUTURE.

IMPORTANT

REPORTS ARE DUE THE 15TH OF THE FOLLOWING MONTH AND MUST BE RECEIVED AT THE BANK BY THE 20TH TO AVOID LIGUIDATED DAMAGES (EVEN IF THERE WERE NO EMPLOYEES) AND INTEREST. LIQUIDATED DAMAGES ARE CALCULATED AT 20% OF THE TRUST OR $25 PER TRUST, WHICHEVER IS GREATER. INTEREST IS DUE AT THE MAXIMUM RATES PERMITTED BY LAW AND SPECIFIED IN THE TRUST AGREEMENT OF EACH TRUST. THESE RATES VARY AND MAY APPROACH OR EXCEED 20% PER ANNUM.

(Metro LC FORM - H)

Los Angeles County Metropolitan Transportation Authority

MONTHLY EMPLOYMENT UTILIZATION REPORT
U. S. Department of Labor
Employment Standards Administration
Office of Federal Contract Compliance Program

This report is required by Executive Order 11246, Sec. 203. Failure to report can result in contracts being cancelled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts.	1. Covered area:	2. Employer's I.D. #	OMB No. 1215-0163 Expires:

3. Current Goals Minority: 28.3% Female: 6.9%	4. Reporting period From: To:	Name and Location of Contractor	Federal Funding Agency

Project Name and Number	Location of Project

Construction Trade	Classification	6. TOTAL FEDERAL & NON-FEDERAL CONSTRUCTION WORK HOURS 6a. Total All Employees By Trade		6b. Black (Not of Hispanic Origin)		6c. Hispanic		6d. Asian or Pacific Islander		6e. American Indian or Alaskan Native		7. Minority Percentage	8. Female Percentage	9. Total Number of Employees		10. Total Number of Minority Employees	
		M	F	M	F	M	F	M	F	M	F			M	F	M	F
	Journeyworkers																
	Apprentices																
	Trainees																
	Subtotal																
	Journeyworkers																
	Apprentices																
	Trainees																
	Subtotal																
	Journeyworkers																
	Apprentices																
	Trainees																
	Subtotal																
	Journeyworkers																
	Apprentices																
	Trainees																
	Subtotal																
	Journeyworkers																
	Apprentices																
	Trainees																
	Subtotal																
Total Journeyworkers																	
Total apprentices																	
Total Trainees																	
Grand Total																	

11. Company Official's Signature & Title	12. Area Code & Phone Number	13. Date Signed	Page _____ of _____

INSTRUCTIONS FOR FILING MONTHLY EMPLOYMENT UTILIZATION REPORT(cc-257)

The Monthly Utilization Report is to be completed by each subject contractor(both prime and sub) and signed by a responsible official of the company. The reports are to be filed by the 5th of each month during the term of the contract, and they shall include the total work-hours for each employee classification in each trade in the covered area for the monthly reporting period. The prime contractor shall submit a report for its aggregate work force. Each subcontractor shall separately submit a report for its aggregate work force. All reports shall be submitted to the OFCCP office in your area. (additional copies of this form may be obtained from the U.S. Department of Labor, Employment Standards Administration OFCCP's office for your area).

Federal Funding Agency	U.S. Government agency funding Project(in whole or part). If more than one agency, list all.
Contractor	Any company which has a construction contract with the U.S. Government or a contract funded in whole or in part with Federal funds.
Minority	Includes Blacks, Hispanics, American Indians, Alaskan Natives, and Asian and Pacific Islanders-both men and women.
1. Cover Area	Geographic area identified in Notice required under 41 CPR 60-4.2.
2. Employer's Identification Number	Federal Social Security Number used on Employer's Quarterly Federal Tax Return(U.S. Treasury Department form 941).
3. Current Goals(Minority & Female)	See Contract Notification.
4. Reporting Period	Monthly, or as directed by the OFCCP, beginning with the effective date of the contract.
5. Construction Trade	Only those construction crafts which contractor employs in the covered area.
6. Work-hours of Employment(a-e)	a. The total number of male HOURS and the total number of female HOURS worked by employees in each classification. b.-e. The total number of male HOURS and the total number of female HOURS worked by each specified group of minority employees in each classification.
Classification	The level of accomplishment or status of the worker in the trade(Journey Worker, Apprentice, Trainee).
7. Minority Percentage	The percentage of total minority work-hours of all work-hours(the sun of the columns 6b, 6c. 6d and 6e divided by column 6a; just one figure for each construction trade).
8. Female Percentage	For each trade the number reported in 6a F divided by the sum of the numbers reported in 6a M and F.
9. Total Number of Employees	Total NUMBER of male and total NUMBER of female employees working in each classification of each trade in the contractor's aggregate work force during reporting period.
10. Total Number of Minority Employees	Total NUMBER of male minority employees and total NUMBER of female minority employees working in each classification in each trade in the contractor's aggregate work force during reporting period.

LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY
LIST OF SUBCONTRACTORS USED DURING THE MONTH

NAME OF PROJECT _____

PROJECT NUMBER _____ REPORT FOR THE MONTH OF _____ YEAR _____

DESCRIPTION OF WORK _____

NAME OF FIRM SUBMITTING REPORT _____

START DATE _____ CONTACT PERSON _____ TELEPHONE NUMBER _____

This form is to be completed monthly by all contractors at all tiers listing all firms performing work for your firm on the project site during the month. This information must be furnished no later than the fifth (5th) day of each month.

SUBCONTRACTOR'S NAME AND ADDRESS	DESCRIPTION OF WORK PERFORMED	AMOUNT OF CONTRACT	FEDERAL EMPLOYER I.D. NUMBER

(Metro LC FORM - J)