

Public Works Contracts and Prevailing Wage Laws

Judicial Branch Entities (“JBE”)¹ must comply with prevailing wage laws when procuring and contracting public works projects.

Prevailing wage requirements have changed significantly in recent years. Recent changes in prevailing wage laws include increased oversight by the Department of Industrial Relations (“DIR”) and increased penalties. As part of the increased oversight, all public works projects must now be registered with the DIR by the entity awarding the contract for the project. Contractors and subcontractors of all levels are required to register with DIR and must certify the payment of prevailing wage on public works projects by submitting certified payroll records directly to the DIR. The new laws increase penalties for contractors. Awarding agencies are now also subject to penalties for prevailing wage law violations.

The following is a summary of current prevailing wage requirements.

1. Determine if Prevailing Wage Applies

- Prevailing wage applies to contracts for public works projects over one thousand dollars (\$1,000).²
- “Public works” means construction, alteration, demolition, installation, or repair work done under contract and paid for in whole or in part out of public funds, including but not limited to pre-construction and post-construction activities.³ Public works also includes carpeting, refuse hauling, and the assembly and disassembly of freestanding and affixed modular office systems.⁴
- Prevailing wage laws also apply to maintenance contracts.⁵
- Prevailing wage does not apply to routine janitorial work, security guard services, and work performed with the JBE’s own forces.⁶

2. Bid Solicitations and Contracts

- The awarding body must include certain statutory language in each invitation to bid a public works or maintenance contract, including statements that the project is subject to prevailing wage laws, notice of wage classifications, and notice that the work is subject to monitoring by the DIR.⁷ **(Sample language below – highlighted in yellow.)**
- Awarding agencies must also include more extensive language regarding prevailing wage laws in the contract. **(Sample language below.)**

¹ JBEs would be considered an “awarding agency” or “awarding body” under the California Labor Code.

² Labor Code section 1771. Hereafter, each section reference shall be deemed a reference to the Labor Code unless stated otherwise.

³ Section 1720(a)(1).

⁴ Sections 1720(a)(1), 1720(a)(5), and 1720.3.

⁵ Section 1771. For definition of “maintenance” see 8 Cal. Regs. § 16000.

⁶ Section 1771, 8 Cal Regs §16000.

⁷ Sections 1771.1(b), 1771.4(a)(1), and 1773.

3. DIR Registration Requirements

a. Contractor Registration Requirements

- Contractors responding to a bid solicitation must be registered with the DIR, and subcontractors listed on a bid must also be registered with the DIR.⁸ The awarding agency should request in the bid documents that the contractor and any subcontractors provide their DIR registration numbers. Prior to awarding a contract, the awarding agency must confirm the contractor and subcontractor registration numbers on the DIR website.
- No public works or maintenance contract should be entered into without proof of the contractors' and subcontractors' current registration with the DIR.⁹

b. Awarding Agency Registration Requirements

- By the earlier to occur of (a) the commencement of work, or (b) 30 days after contract award, the awarding agency must register the project with the DIR using the PWC-100 form.¹⁰
- If during the course of the project, a new contractor or subcontractor comes on to the project, the PWC-100 form must be updated with the new information, including new or additional contractor/subcontractor registration numbers.
- The PWC-100 form can be submitted electronically to the DIR at: <https://www.dir.ca.gov/pwc100ext/>
- In no event is a contractor or subcontractor of any level permitted on the public works project without a DIR registration number.

c. Exemption from Registration Requirement for Small Projects

- The law provides an exemption from the requirements for contractor/subcontractor DIR registration¹¹ and awarding body project registration¹² for projects of (a) \$25,000 or less when the project is for construction, alteration, demolition, installation and repair, and (b) \$15,000 or less for maintenance work.
- Notwithstanding this exemption from the registration requirements, prevailing wage is still required for all public works projects over \$1,000. Contractors and subcontractors on small projects that are exempt from registration must still maintain certified payroll records, but do not need to submit the records to DIR during the course of the project.

⁸ Sections 1771.1 and 1725.5.

⁹ Section 1771.1(b).

¹⁰ Section 1773.3.

¹¹ Section 1771.1(n).

¹² Section 1773.3(i). As such, the awarding body is not required to submit a PWC-100 for an exempt small project.

4. During the Course of the Project

- The awarding agency must post or require the prime contractor to post job site notices as prescribed by regulation.¹³ For information on the current regulation, contact the DIR. A hyperlink to the DIR website is provided below.
- The awarding body must comply with prevailing wage laws and must report any prevailing wage violations to the Labor Commissioner.¹⁴
- Contractor and all subcontractors must provide electronic certified payroll reports to the Labor Commissioner on a monthly basis.¹⁵

5. Withholding of Final Payment

- The awarding agency must not make final payment on a project until at least 30 days after all required contractor and subcontractor lists, including registration numbers, have been submitted to DIR.¹⁶
- The contractor and subcontractor list is part of the PWC-100 form submitted by the awarding agency at the start of the project. Therefore, the mandatory wait time of 30 days will not be an issue on longer projects. However, if a project is of a short duration, the awarding agency must ensure that at least 30 days have passed between the submission of the PWC-100 form and the final project payment.
- If a contractor or subcontractor was not included on the original PWC-100 list, the awarding agency must update the list during the course of the project. The awarding agency must then wait 30 days from the update to make the final payment.

6. Awarding Agency Penalties

- Violations by an awarding body can result in the following penalties:
 - Monetary penalties of up to \$100 per day.
 - Multiple violations (defined as two willful violations in 12 months) can lead to a loss of state funds for the awarding body's construction projects for a period of one year.¹⁷
 - Individual employees are subject to criminal penalties for willful violations.¹⁸
- Violations by a contractor can result in monetary penalties, criminal charges, debarment, and stop work orders.¹⁹

¹³ Section 1771.4(a)(2).

¹⁴ Section 1720, et seq.; <http://www.dir.ca.gov/Public-Works/Awarding-Bodies.html>

¹⁵ Section 1771.4 (A)(3)(a)(i)(ii)

¹⁶ Section 1773.3(d).

¹⁷ Section 1773.3(c)(d)(f).

¹⁸ Sections 1777, 1778.

¹⁹ Sections 1775, 1777.1.

Additional information regarding prevailing wage laws can be found at the DIR's Public Works website (<http://www.dir.ca.gov/Public-Works/PublicWorks.html>).²⁰ Note: Prevailing wage laws are subject to change. Personnel handling procurement and public works projects should take steps to remain current on the requirements.

Below are sample provisions for public work contracts and maintenance contracts that require the payment of prevailing wage (conforming edits, such as edits to capitalized terms such as "Work" and "Project" may be necessary to incorporate into the awarding body's specific contract). Highlighted items should be included in both the bid solicitation documents and the contract.

1. Labor Code Provisions

1.1. Prevailing Wage:

- 1.1.1. The Contractor and all Subcontractors under the Contractor shall pay all workers on Work performed pursuant to this Contract not less than the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work as determined by the Director of the Department of Industrial Relations, State of California, for the type of work performed and the locality in which the work is to be performed, pursuant to sections 1770 et seq. of the California Labor Code. Copies of the general prevailing rates of per diem wages for each craft, classification, or type of worker needed to execute the Contract, as determined by Director of the State of California Department of Industrial Relations, are on file at the Judicial Council's principal office. Prevailing wage rates are also available from the Court or on the internet at (<http://www.dir.ca.gov>).
- 1.1.2. Contractor shall ensure that Contractor and all of Contractor's Subcontractors execute the Prevailing Wage and Related Labor Requirements Certification attached to the Contract and incorporated herein.
- 1.1.3. The Project is subject to compliance monitoring and enforcement by the Department of Industrial Relations. Contractor shall post job site notices, as prescribed by regulation. Contractor shall comply with all requirements of Labor Code section 1771.4, except the requirements that are exempted by the Labor Commissioner for the Project.

²⁰ This external link is being provided for general information purposes only. The Judicial Council does not warrant the accuracy, availability, or completeness of the information on the DIR website.

1.2. Registration:

1.2.1. Contractor shall comply with the registration and compliance monitoring provisions of Labor Code section 1771.4, including furnishing its certified payroll records (“CPR(s)”) to the Labor Commissioner of California and complying with any applicable enforcement by the Department of Industrial Relations (“DIR”). Labor Code section 1771.1(a) states the following:

“A contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, as defined in this chapter, unless currently registered and qualified to perform public work pursuant to Section 1725.5. It is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded.”

1.2.2. Contractor shall ensure that Contractor and all “subcontractors” (as defined by Labor Code section 1722.1), comply with Labor Code section 1725.5, including without limitation the registration requirements with the Department of Industrial Relations that are set forth in Labor Code section 1725.5. Contractor represents to the Court that all “subcontractors” (as defined by Labor Code section 1722.1) are registered pursuant to Labor Code section 1725.5. Contractor shall not permit any Subcontractor to perform Work on the Project, without first verifying the Subcontractor is properly registered with the DIR as required by law, and providing this information in writing to the Court. Contractor acknowledges that, for purposes of Labor Code section 1725.5, this Work is public work to which Labor Code section 1771 applies.

1.3. Hours of Work:

1.3.1. Notwithstanding the timing and duration of the Work under the Contract which is subject to court activities and other coordination required for occupied facilities, as provided in article 3 (commencing at section 1810), chapter 1, part 7, division 2, of the Labor Code, eight (8) hours of labor shall constitute a legal day’s work. The time of service of any worker employed at any time by Contractor or by any Subcontractor on any subcontract under this Contract upon the Work or upon any part of the Work contemplated by this Contract shall be limited and restricted by Contractor to eight (8) hours per day, and forty (40) hours during any one week, except as hereinafter provided. Notwithstanding the provisions

hereinabove set forth, Work performed by employees of Contractor in excess of eight (8) hours per day and forty (40) hours during any one week, shall be permitted upon this public work upon compensation for all hours worked in excess of eight (8) hours per day at not less than one and one-half times the basic rate of pay.

- 1.3.2. Contractor shall keep and shall cause each Subcontractor to keep an accurate record showing the name of and actual hours worked each calendar day and each calendar week by each worker employed by Contractor in connection with the Work or any part of the Work contemplated by this Contract. The record shall be kept open at all reasonable hours to the inspection of the Court, the Judicial Council, and to the Division of Labor Standards Enforcement of the DIR.
- 1.3.3. Pursuant to Labor Code section 1813, Contractor shall as a penalty to the Court forfeit the statutory amount (believed by the Court to be currently twenty five dollars (\$25)) for each worker employed in the execution of this Contract by Contractor or by any Subcontractor for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any one calendar day and forty (40) hours in any one calendar week in violation of the provisions of article 3 (commencing at section 1810), chapter 1, part 7, division 2, of the Labor Code.
- 1.3.4. Any Work necessary to be performed after regular working hours, or on Sundays or other holidays shall be performed without additional expense to the Court.
- 1.3.5. Project Work will typically take place in an occupied court facility; therefore, work hours may be restricted depending upon the Project. The individual Service Work Order will include any restrictions on hours of work. If the Service Work Order does not include a restriction on hours of work, then the work must take place during business hours.

1.4. Payroll Records:

- 1.4.1. Contractor and all subcontractors shall comply with the compliance monitoring provisions of Labor Code section 1771.4, including furnishing its CPRs to the Labor Commissioner of California and complying with any applicable enforcement by DIR. Labor Code section 1771.4 requires Contractor and subcontractors to provide electronic copies of CPRs to the Labor Commissioner of California at least once every 30 days, and within 30 day of project completion, the failure to timely provide the CPRs could result in penalties of up to \$5,000, or as otherwise determined by Labor Code section 1771.4, applicable laws, and regulations.
- 1.4.2. In addition to submitting CPR(s) to the Labor Commissioner of California pursuant to Labor Code section 1771.4 or any other applicable law, if

requested by the Court or Judicial Council, Contractor shall provide, and shall cause each Subcontractor performing any portion of the Work to provide the Court or Judicial Council CPR(s), 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 the Contractor and/or each Subcontractor in connection with the Work.

1.4.3. All CPRs shall be available for inspection at all reasonable hours at the principal office of Contractor on the following basis:

1.4.3.1. A certified copy of an employee's CPR shall be made available for inspection or furnished to the employee or his/her authorized representative on request.

1.4.3.2. CPRs shall be made available for inspection or furnished upon request to a representative of the Court, the Judicial Council, Division of Labor Standards Enforcement, Division of Apprenticeship Standards, and/or the Department of Industrial Relations.

1.4.3.3. CPRs shall be made available upon request by the public for inspection or copies thereof made; provided, however, that a request by the public shall be made through either the Court, the Judicial Council, Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement. If the requested CPRs have not been provided pursuant to the provisions herein, the requesting party shall, prior to being provided the records, reimburse the costs of preparation by 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 Contractor.

1.4.4. The form of certification for the CPRs shall be as follows:

I, _____ (Name-Print), the undersigned, am the _____ (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, number of pages) are the originals or true, full, and correct copies of the originals which depict the payroll record(s) of actual disbursements by way of cash, check, or whatever form to the individual or individual named, and (b) we have complied with the requirements of sections 1771, 1811, and 1815 of the Labor Code for any work performed by our employees on the Project.

Date: _____ *Signature:* _____
(Section 16401 of Title 8 of the California Code of Regulations)

- 1.4.5. Each Contractor shall file a certified copy of the CPRs with the entity that requested the records within ten (10) days after receipt of a written request.
- 1.4.6. Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by the Court, the Judicial Council, Division of Apprenticeship Standards, or Division of Labor Standards Enforcement shall be marked or obliterated in such a manner as to prevent disclosure of an individual's name, address, and social security number. The name and address of Contractor awarded Contract or performing Contract shall not be marked or obliterated.
- 1.4.7. Contractor shall inform the Court of the location of the records enumerated hereunder, including the street address, city, and county, and shall, within five (5) Business Days, provide a notice of change of location and address.
- 1.4.8. In the event of noncompliance with the requirements of this section, Contractor shall have ten (10) days in which to comply subsequent to receipt of written notice specifying in what respects Contractor must comply with this section. Should noncompliance still be evident after the ten (10) day period, Contractor shall, as a penalty to the Court or Judicial Council forfeit one hundred dollars (\$100) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of Division of Apprenticeship Standards or Division of Labor Standards Enforcement, these penalties shall be withheld from progress payments then due.
- 1.4.9. It shall be the responsibility of Contractor to ensure compliance with the provisions of Labor Code section 1776.

1.5. Apprentices:

- 1.5.1. Contractor acknowledges and agrees that, if this Contract involves a dollar amount greater than or a number of working days greater than that specified in Labor Code section 1777.5, then this Contract is governed by the provisions of Labor Code Section 1777.5. It shall be the responsibility of Contractor to ensure compliance with this Article and with Labor Code section 1777.5 for all apprenticeship occupations.
- 1.5.2. Apprentices of any crafts or trades may be employed and, when required by Labor Code section 1777.5, shall be employed provided they are

properly registered in full compliance with the provisions of the Labor Code.

- 1.5.3. Every such apprentice shall be paid the standard wage paid to apprentices under the regulations of the craft or trade at which he/she is employed, and shall be employed only at the work of the craft or trade to which she/he is registered.
- 1.5.4. Only apprentices, as defined in section 3077 of the Labor Code, who are in training under apprenticeship standards and written apprentice agreements under chapter 4 (commencing at section 3070), division 3, of the Labor Code, are eligible to be employed. The employment and training of each apprentice shall be in accordance with the provisions of the apprenticeship standards and apprentice agreements under which he/she is training.
- 1.5.5. Pursuant to Labor Code section 1777.5, if that section applies to this Contract as indicated above, Contractor and any Subcontractors employing workers in any apprenticeable craft or trade in performing any Work under this Contract shall apply to the applicable joint apprenticeship committee for a certificate approving the Contractor or Subcontractor under the applicable apprenticeship standards and fixing the ratio of apprentices to journeymen employed in performing the Work.
- 1.5.6. Pursuant to Labor Code section 1777.5, if that section applies to this Contract as indicated above, Contractor and any Subcontractor may be required to make contributions to the apprenticeship program.
- 1.5.7. If Contractor or Subcontractor willfully fails to comply with Labor Code section 1777.5, then, upon a determination of noncompliance by the Administrator of Apprenticeship, it shall:
 - 1.5.7.1. Be denied the right to bid or propose on any subsequent project for one (1) year from the date of such determination; and
 - 1.5.7.2. Forfeit as a penalty to the Court the full amount as stated in Labor Code section 1777.7. Interpretation and enforcement of these provisions shall be in accordance with the rules and procedures of the California Apprenticeship Council and under the authority of the Chief of the Division of Apprenticeship Standards.
- 1.5.8. Contractor and all Subcontractors shall comply with Labor Code section 1777.6, which section forbids certain discriminatory practices in the employment of apprentices.
- 1.5.9. Contractor shall become fully acquainted with the law regarding apprentices prior to commencement of the Work. Special attention is

directed to sections 1777.5, 1777.6, and 1777.7 of the Labor Code, and title 8, California Code of Regulations, section 200 et seq. Questions may be directed to the State Division of Apprenticeship Standards, 455 Golden Gate Avenue, San Francisco, California 94102.

- 1.5.10. Contractor shall ensure compliance with all certification requirements for all workers on the Project including, without limitation, the requirements for electrician certification in Labor Code sections 108 et seq.

End of Contract Terms

See Next Page for Prevailing Wage Certification Form

PREVAILING WAGE AND
RELATED LABOR REQUIREMENTS CERTIFICATION

PROJECT/CONTRACT NO.: [PROJECT NUMBER] between the Superior Court of California,
County of [_____] (the “Court”) and _____
(the “Contractor”) (the “Contract” or the “Project”).

I hereby certify that I will conform to the State of California Public Works Contract requirements regarding prevailing wages, benefits, on-site audits with 48-hours’ notice, payroll records, and apprentice and trainee employment requirements, for all Work on the Project including, without limitation, the requirement that Contractor and all of its Subcontractors are registered pursuant to Labor Code section 1771, et seq.

Date: _____

Proper Name of Contractor: _____

/ Subcontractor

Signature: _____

Print Name: _____

Title: _____

THIS FORM MUST BE COMPLETED BY THE CONTRACTOR AND ALL
SUBCONTRACTORS

END OF DOCUMENT