

DATE ISSUED: September 10, 2003

REPORT NO. 03-184

ATTENTION: Honorable Mayor and City Council

SUBJECT: Certification of a Labor Compliance Program within  
Equal Opportunity Contracting

#### SUMMARY

THIS IS AN INFORMATION ITEM ONLY. NO ACTION IS REQUIRED ON  
THE PART OF THE COMMITTEE OR THE CITY COUNCIL.

#### BACKGROUND

The State of California's Department of Industrial Relations has approved the City of San Diego's application for certification as a Labor Compliance Program, effective August 11, 2003. This program operates within the City Manager's Office in Equal Opportunity Contracting. The DIR's approval is for an interim one-year period; the City may apply for permanent status after eleven continuous months of operation.

Labor compliance encompasses administration of prevailing wage and apprentice utilization requirements. Prevailing wages are specific, minimum hourly wage rates determined by State or Federal government for trades workers on public works projects. When prevailing wages are required, City staff receive and review certified payroll records, resolve issues of incorrect classification and/or underpayment and maintain legal documentation within project files.

Formal certification as a Labor Compliance Program benefits the City in several ways:

- City staff will work directly with the DIR to investigate and resolve issues of non-compliance with labor standards regulations, allowing for a more efficient, speedier settlement.

- A DIR-certified labor compliance program allows an awarding body to withhold contract payments for certain violations of the labor code and to collect and retain penalties when investigations establish occurrences of noncompliance.
- The City must adopt and enforce, or contract with a third party to adopt and enforce, a labor compliance program in order to award a contract financed in any part with funds from the Water Security, Clean Drinking Water, Coastal and Beach Protection Act of 2002 (Proposition 50).
- The City may consider providing third party services as a labor compliance program for other agencies.

Additionally, the City and its contractors benefit from a clearly defined manual outlining prevailing wage requirements and consolidating all applicable documents and forms, including certified payroll reports and informational handouts.

## DISCUSSION

When City of San Diego projects include prevailing wage requirements, EOC staff have received and maintained records to ensure compliance with labor standards regulations. Along with other EOC responsibilities, this work has been performed by Associate Management Analysts under the direction of Supervising Management Analysts. Various State and Federal agencies periodically audit City project files to review conformity with labor compliance terms as a condition of receipt of funds.

At the start of the current calendar year, operational functions in EOC were redistributed to create concentrated teams of Contract Compliance Officers and Labor Compliance Officers. This division of work respects an increasing complexity of regulations and allows staff to develop a specialty focus. Within this context, compliance officers can better respond to the needs of contractors and other City staff, assisting in precise understanding of contract elements.

The Labor Compliance Program monitors, enforces and provides policy direction on wage payment issues for public works projects, including administration of State and Federal labor requirements and apprentice utilization. In performance of these duties, Labor Compliance Officers conduct onsite inspections and employee interviews in addition to examining weekly certified payroll reports, monthly employment and invoicing records, engineers' daily diaries and other available documentation to determine contractor and subcontractor observance of prevailing wage rules. When necessary, detailed audits are performed. Labor Compliance Officers work with project managers, the City Attorney's Office, contractors, subcontractors, apprenticeship and labor organizations, representatives from State and Federal agencies and individual employees to resolve wage payment and apprenticeship issues.

As stated in the preface to the City's application for certification, this Labor Compliance Program contains labor compliance standards required by State and Federal laws, regulations, and directives, as well as policies and contract provisions, which include, but are not limited to, the following:

- Contractors' payment of applicable general prevailing wage rates.
- Contractors' employment of properly registered apprentices.
- Contractors' provision of certified payroll records upon request, but not less than weekly.
- Program's monitoring of City construction sites for verification of proper payments of prevailing wage rates and work classification.
- Program's presentation at pre-construction conferences with contractors/subcontractors.
- Program's withholding of contract payments and imposing penalties for noncompliance.
- Program's preparation and submittal of annual reports.

In its application to the DIR for certification, the City of San Diego submitted evidence of its ability to operate a Labor Compliance Program. The following factors were considered in determining approval:

- Experience and training of the awarding body's labor compliance personnel on public works labor compliance issues.
- The awarding body's record of taking cognizance of Labor Code violations and of withholding in the preceding five years.
- The availability of legal support for the Labor Compliance Program.
- The number of public works contracts the awarding body annually administers.
- The availability and quality of a manual outlining the responsibilities and procedures of the Labor Compliance Program to the awarding body.
- The method by which the awarding body will transmit notice to the Labor Commissioner of willful violations as defined in Labor Code Section 1777.1(d).

The Labor Compliance Program provides services for internal City customers on projects which include prevailing wage requirements. These departments include Development Services, Engineering and Capital Projects, Environmental Services, Fire and Life Safety

Services, General Services, Library, Metropolitan Wastewater, Police, Special Projects, Transportation, Water, and the Independent Agencies.

Specialized trainings for City staff and members of the contracting community are under development, and meetings with the City Attorney's Office occur with regular frequency to address ongoing and unique issues.

The City of San Diego's Labor Compliance Program is included in an official list of certified programs on the DIR's website at [www.dir.ca.gov/lcp.asp#lcpelist](http://www.dir.ca.gov/lcp.asp#lcpelist).

Respectfully submitted,

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