



THE CITY OF SAN DIEGO
REPORT TO THE CITY COUNCIL

DATE ISSUED:

REPORT NO: 09-138

ATTENTION:

Council President and Members of the City Council
Agenda of

SUBJECT:

City of San Diego Labor Compliance Program for the State of California
Department of Industrial Relations Certification

REFERENCE:

Report No. 03-184, Certification of a Labor Compliance Program within
Equal Opportunity Contracting

REQUESTED ACTION: Accept report and authorize a resolution adopting the City of San Diego's Labor Compliance Program in conformance with the requirements of the State of California Department of Industrial Relations [DIR].

STAFF RECOMMENDATION: Accept report and authorize resolution.

BACKGROUND: In August 2003, the City of San Diego's application for certification as a Labor Compliance Program was approved by the State of California's DIR. Approval has expired; to achieve re-certification, a resolution adopting the program as outlined in the Labor Compliance Program Manual (attached) is required from the City Council. The City's Labor Compliance Program operates in the Administration Department within the Equal Opportunity Contracting Program [EOCP]. A certified labor compliance program is a contingency for receipt of funds through the Water Security, Clean Drinking Water, Coastal and Beach Protection Act of 2002.

EXECUTIVE SUMMARY:

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 trade classifications on public works projects. California Labor Code Section 1771.5 authorizes an agency that awards public works contracts to establish a Labor Compliance Program to enforce prevailing wage requirements on its behalf.

A certified Labor Compliance Program must follow specific reporting and performance standards in accordance with Title 8, California Code of Regulations, §16421-16439. The City of San Diego's Labor Compliance Program Manual outlines labor compliance standards required by State and Federal laws, regulations, and directives, as well as policies and contract provisions, including, but not limited to:

- Contractors' payment of applicable general prevailing wage rates.
- Contractors' employment of properly registered apprentices.
- Contractors' provision of weekly certified payroll records.
- 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.

The Labor Compliance Program provides services for internal City customers on projects with prevailing wage requirements, including projects with State or Federal funding sources, sewer and water projects with an estimated value of over ten million dollars (in accordance with Resolution No R-298185), and any other project which requires adherence to prevailing wage law. Customer departments have included Purchasing & Contracting Department, Public Utilities Department, Engineering and Capital Projects, Environmental Services, Fire-Rescue Department, General Services, Library, Police Department, and the Independent Agencies. Specialized trainings are conducted for City staff, and meetings with the City Attorney's Office occur with regular frequency to address ongoing and unique issues.

To determine contractor and subcontractor observance of prevailing wage rules, Compliance Officers (classified as Senior and Associate Management Analysts), under the direction of the EOCP Manager, conduct onsite inspections, employee interviews, and examinations of payroll reports and invoice records. When necessary, detailed project reviews can be performed. Compliance Officers work with project managers and resident engineers, contractors, subcontractors, apprenticeship and labor organizations, the City Attorney's Office, representatives from State and Federal agencies, and individual employees to resolve wage payment and apprenticeship issues.

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

- Experience and training of the awarding body's labor compliance personnel on public works labor compliance issues.
- The availability and quality of a manual outlining the responsibilities and procedures of the Labor Compliance Program to the awarding body.
- The availability of legal support for the Labor Compliance Program.

- The number of public works contracts the awarding body annually administers.
- The awarding body's record of taking cognizance of Labor Code violations and of withholding in the preceding five years.
- 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).

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

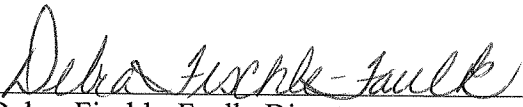
- City staff works directly with the DIR to investigate and resolve issues of non-compliance with labor standards regulations, allowing for a more efficient, speedier settlement.
- A DIR-certified labor compliance program allows an awarding body to withhold contract payments for certain violations of the labor code and to collect and retain penalties when investigations establish occurrences of noncompliance.
- The City, its contractors and subcontractors, and the public benefit from a clearly defined Labor Compliance Program Manual which consolidates prevailing wage requirements and all applicable documents.
- Certain grant funds, such as those awarded through the Water Security, Clean Drinking Water, Coastal and Beach Protection Act of 2002, require an awarding body to maintain its own certified labor compliance program as a contingency for acceptance of the funds.

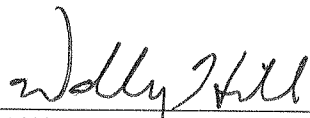
During the next calendar year, the DIR anticipates offering a fee-based option to provide "enhanced labor compliance monitoring" in lieu of maintaining a certified Labor Compliance Program (Senate Bill 9 or SBX2-9). The costing method has not been determined, but will probably not exceed "one-quarter of one percent of bond proceeds." However, fee payment in lieu of maintaining a Labor Compliance Program will only apply to public works contracts awarded after the new fee and regulatory structure have been adopted. Contracts awarded prior to that date will be subject to current requirements for the life of those contracts.

FISCAL CONSIDERATIONS: The anticipated maximum program and staffing expense in FY 2010 is \$450,000 which is already budgeted in total in the City's annual appropriation ordinance. Each year, a portion of these costs may be reimbursable from grant funds. Currently, there are approximately 200 contracts and subcontracts with a total value over \$222,400,000 with prevailing wage requirements. As a condition of receipt, water project grant funds (\$103,255,769) must be monitored by a certified Labor Compliance Program. These funds and all grant funds are subject to invalidation of the funding agreements if the awarding agency does not adhere to prevailing wage requirements; in such case, the City could be required to return the funds in whole or in part.

KEY STAKEHOLDERS AND PROJECTED IMPACTS: The key stakeholders for the Labor Compliance Program are employees and employers whose projects are covered by prevailing wage requirements and the residents of the City of San Diego.

PREVIOUS COUNCIL and/or COMMITTEE ACTION: None regarding this report.


Debra Fischle-Faulk, Director
Administration Department


Wally Hill
Assistant Chief Operating Officer

Attachment: City of San Diego's Labor Compliance Program Manual