



THE CITY OF SAN DIEGO
REPORT TO THE CITY COUNCIL

DATE ISSUED: June 5, 2013 REPORT NO: 13-051
ATTENTION: Rules and Economic Development Committee, Agenda of June 19, 2013
SUBJECT: Prevailing Wage Requirements for Municipal Public Works Projects

REQUESTED ACTION:

Adopt an ordinance that requires that on municipal projects that are “public works” within the meaning of the State prevailing wage law, contractors and subcontractors must comply with all provisions of the State prevailing wage law. The City and its departments, boards, and agencies shall advertise and include specifications requiring compliance with the State prevailing wage law in contracts for public works.

In addition, Resolution R-298185 would need to be rescinded to be consistent with the proposed ordinance in the application of state prevailing wages to City public works projects.

STAFF RECOMMENDATION:

Adopt the ordinance.

BACKGROUND:

The city of San Diego does not require the payment of prevailing wages in most public work contracts funded by city funds (general fund, special funds or enterprise funds) or regional funds (TransNet). However, the city does require payment of prevailing wages on state or federal funded contracts. Additionally, City Council Resolution R-298185 (adopted in July 2003) currently states that the City Manager or designee is directed to advertise and include specification requiring compliance with State's prevailing wage laws on all City public works municipal affair water and/or sewer fund projects, including design-build projects when the engineer's estimate for the construction of the project exceeds ten million dollars.

Attachment (1) lists all Capital Improvement Program (CIP) projects that have been identified for construction during the current fiscal year, including whether or not prevailing wages were required.

Out of 61 contracts awarded in Fiscal Year 2013 so far, only 10 contracts have been subject to prevailing wages. However, the city may include prevailing wage specifications in its public works municipal affair contracts if it is consistent with the Charter. During the Fiscal Year 2013, it is estimated that 17.7% of contracts by number, or 24.4% of contracts by dollar value will be subject to prevailing wages (Table 1). Attachment (2) lists Fiscal Year 2014 projects that will be subject to prevailing wage if the contracts meet the state thresholds.

Table 1: Application of prevailing wages on CIP contracts in Fiscal Year 2013 (estimates)

	With prevailing wage	Without prevailing wage	Total
Number of contracts	20	93	113
Value of contracts	\$48,477,017	\$150,157,734	\$198,634,751

DISCUSSION

California’s prevailing wage law is embodied in Sections 1720 - 1780 of the California Labor Code, and requires that workers on every state, local, and special district government public works project with a contract cost of applicable thresholds be paid the prevailing rate of per diem wages for similar work within the locality of the public works project. The prevailing rate is the rate established by collective bargaining agreements for each individual craft within each locality, and is determined by the state Department of Industrial Relations, based on an annual survey.

The prevailing wage law in the state is modeled after the federal Davis-Bacon law (1931), and applies to public works construction by all counties, general law cities, school and college districts, regional water authorities, port districts, regional airports, and regional transportation agencies. It is also mandatory on projects utilizing more than \$1,000 of state funds.

California’s Constitution guarantees to charter cities a large measure of "home rule" or direct control over local affairs. In *State Building and Constructions Trades Councils of California, AFL – CIO v. City of Vista, No. S173586*, the California Supreme Court ruled that locally funded public works projects performed by chartered cities are municipal affairs under the California Constitution and, as a result, the wages paid to workers on charter city projects are not subject to California's prevailing wage law.

As of mid-2011, there were 482 incorporated cities in California. Of these, 361 (or roughly three-quarters) are general law cities, while 121 are charter cities. However, all of the state's 10-largest cities, in descending order, Los Angeles, San Diego, San Jose, San Francisco, Fresno, Sacramento, Long Beach, Oakland, Bakersfield, Anaheim, are charter cities. **All other large cities, besides San Diego require prevailing wage specifications in most public works projects.**

San Diego’s Charter requires the city to competitively bid and award certain public works municipal affair projects to the lowest responsible and reliable bidder. It neither requires nor prohibits a prevailing wage specification in the contracts.

FISCAL CONSIDERATIONS ON CAPITAL COSTS

The city does not estimate hard costs of a project based on the component costs of labor, materials, fuel, profits etc. City engineers do not use wage rates or hours of labor to estimate unit project costs, nor do we require contractors to submit bids with a breakdown of labor costs. Instead, the city uses previous bids for a project of similar type within similar market conditions to estimate project costs. Since the types of contracts are quite different between prevailing wage projects, and non-prevailing wage projects, and the pool of projects subject to prevailing wage is limited and unique (e.g. Central Library), it is difficult to isolate the positive or negative impact of prevailing wage on project costs. Due to their diverse funding sources, prevailing wage jobs are typically larger projects.

Including a prevailing wage specification within the bid documents allows competition among contractors to drive down the non-labor costs, which the Economic Census (a 5-year survey of businesses conducted by the U.S. Census Bureau) estimates to be 78 percent of construction value. Soft costs (including design, engineering and inspections) to the city may also be reduced to the extent that quality craftsmen lower the incidents of corrective action. Furthermore, since all state agencies (including CalTrans), as well as local agencies such as SANDAG, MTS, County of San Diego, San Diego Unified School District, San Diego Community College District, San Diego Port District, San Diego County Regional Airport Authority, San Diego County Water Authority, and most cities in the region include prevailing wage in their contracts, there is a competitive market place among public works contractors that keeps prices competitive. Lastly, universal application of prevailing wages requirements will benefit the industry by creating certainty and standardization.

Since prevailing wage rate is the area standard for apprentice training programs certified by the state of California, there are no labor cost differentials amongst projects that utilize apprentices. Market forces are expected to attract journeymen with more experience and training to better paying projects in the region. Increased labor productivity may result in fewer hours of labor being required thus offsetting possible higher wage rate. Additionally, higher wage rates may lead contractors to substitute capital or other inputs for labor, mitigating the impact of higher wages rates on total construction costs.

For these reasons, the increase (or decrease) in capital costs as a result of prevailing wages cannot be determined. As market conditions change, irrespective of whether or not the city requires prevailing wages, it impacts project costs. For example, the most significant factor in road repair is the supply of asphalt. During the recession, there were larger number of bidders as there were fewer construction projects to bid on, and many residential contractors started doing commercial work. As the economy recovers, there will be some adjustment in both the number and type of bidders.

It should also be noted that the financing cost for construction varies by individual contractor. In other words, some contractors are better capitalized, have better credit, and have more bonding capacity, better terms for letters of credit, and lines of credit, etc. and therefore their cost of funds, both in terms of fees and interest, affects their bottom line. Other soft costs include worker compensation insurance, and quality assurance monitoring. Since these costs depend on who is bidding, it is speculative to impute the costs of prevailing wage bidders to non-prevailing wage bidders, and vice versa.

LABOR COMPLIANCE

In 2009, the city's Equal Opportunity Contracting (EOC) instituted a Labor Compliance Program for the purpose of implementing its policy relative to the labor compliance provisions of state and federally funded public works contracts. Key components of this program are:

- Contractors' payment of applicable general prevailing wage rates.
- Contractors' employment of properly registered apprentices.
- Contractors' provision of certified payroll records upon request.
- Monitoring construction sites for verification of proper payments of prevailing wage rates and work classification.
- Presentation at pre-construction conferences with contractors/subcontractors.
- Enforcement against noncompliance by withholding of contract payments and imposing penalties.
- Preparing and submitting annual reports.

Since the city has a certified Labor Compliance Program, there will not be a learning curve for staff. However, as the volume of projects subject to prevailing wage is expected to increase, the current staff (2 specialists in EOC's Labor Compliance unit) will likely be insufficient. These specialists review contract language and certified payroll reports, interview employees at jobsites, identify miscalculations and violations, request corrections and liaison with the Department of Industrial Relations. Resident engineers or project managers from individual departments assist by compiling daily diaries of jobsite activities and by receiving certified payroll records from contractors.

In order to minimize the impact of this proposal on labor compliance, staff proposes to phase in the prevailing wage provision over the next 6 months. During this time, staff will develop administrative guidelines that may include the following components:

- Method of monitoring payroll and worksite checks, such as random sampling;
- Training and certification of city inspectors in labor compliance;
- Partnerships with state Division of Labor Standards Enforcement or other nonprofit compliance programs, whilst maintaining the inherently governmental function of contract enforcement;
- Outreach to contractors and workforce.
- Coordination and integration with veterans, small and minority business contracting.

City will evaluate workload impact of these changes on labor compliance staffing, and will return to the City Council with any budgetary changes, if necessary.

ECONOMIC CONSIDERATIONS

Construction jobs have the potential of being middle-class jobs with a career ladder. Taxpayers benefit from this proposal in each of the three major components of the prevailing wage requirements:

- (1) **Wages:** Self-sufficiency in earnings increases the tax-base. In San Diego region there are 56,500 construction workers, and we expect that a significant share of these are now or will

be employed on public works projects. These workers suffered a significant impact during the recent recession, during which more than a third of the jobs were lost, primarily in the private sector. For construction workers employed on local government projects in the region, their weekly wages in 2011 were \$1,339, according to the Bureau of Labor Statistics. This income is still not enough to qualify for an existing median-priced home in San Diego, which is \$78,580 annually, according to the California Association of Realtors.

- (2) **Benefits:** the wage package includes health benefits or a cash-equivalent for the worker to buy healthcare. This is quite important in the construction industry, as it has a high share of temporary/transient jobs, and the highest rate of long-term uninsured workers among any industry in California. The California Health Interview Survey estimated that over a quarter of the workers during the peak of employment in 2005, did not have any insurance for the entire year. Since construction jobs are hazardous and exert a significant physical toll on worker health, this insurance is critical.
- (3) **Training:** There is a lifetime of increased productivity for an apprentice, at no cost to the taxpayer. It is estimated that there are between 40-60 thousand apprentices in California state-registered apprenticeship programs, to which the private sector (contractors and workers) contribute \$9,000 annually for training each apprentice. Many of these programs offer nationally recognized credentials, and graduate journeymen for a skilled career in construction.

STAKEHOLDER OUTREACH

Mayor has received feedback from construction trades as well as contractors. Furthermore, staff intends to present this proposal to construction industry stakeholders at the next regularly scheduled quarterly meeting on June 20, 2013. Stakeholder outreach will continue through the process of developing administrative guidelines to implement this proposal after the adoption of the ordinance.

PREVIOUS COUNCIL COMMITTEE ACTION

There have been two hearings of the Rules Committee on the prevailing wage issue on September 22, 2010 and on May 15, 2013. In the latter hearing, the Rules & Economic Development Committee heard a report from the Mayor's Office recommending the adoption of an ordinance addressing the applicability of state prevailing wage laws to municipal projects.

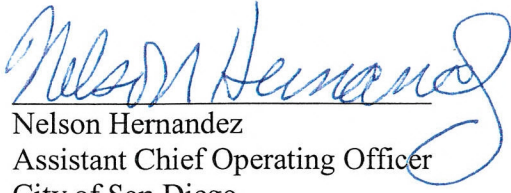
CONCLUSION

Requiring the payment of prevailing wages on the City's public works municipal affair projects can result in the following benefits: local construction careers, stimulation of marketplace competition; ensuring that contractors compete on an even playing field; providing a better value to taxpayers by ensuring the project will be adequately built by skilled labor force; and preventing the waste of public funds by minimizing expenditures arising from poor quality workmanship.

The city must therefore adopt an ordinance that requires that on municipal projects that are "public works" within the meaning of the State prevailing wage law, contractors and subcontractors must

comply with all provisions of the State prevailing wage law.¹ The City and its departments, boards, and agencies shall advertise and include specifications requiring compliance with the State prevailing wage law in contracts for public works.

Respectfully Submitted,


Nelson Hernandez
Assistant Chief Operating Officer
City of San Diego

ATTACHMENTS:

1. FY2013 CIP projects with application of prevailing wage under current regulations.
2. FY2014 CIP projects with application of prevailing wage under current regulations.
3. Memorandum from Mayor regarding "Prevailing Wage (docketed for May 15, 2013)" dated May 8, 2013.

¹ The "State prevailing wage law" means Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the California Labor Code.