



THE CITY OF SAN DIEGO

Report to the City Council

DATE ISSUED: February 2, 2017 REPORT NO. 17-005
ATTENTION: Budget and Government Efficiency Committee
SUBJECT: Prevailing Wage Annual Report
REFERENCE: N/A

REQUESTED ACTION:

Informational report only.

STAFF RECOMMENDATION:

Informational report only.

BACKGROUND:

This report contains information on the implementation of the Prevailing Wage Ordinance beginning January 1, 2014 through June 30, 2016. The report summarizes compliance monitoring activities, wages and penalties assessed and/or recovered, and provides a brief benchmarking study.

EXECUTIVE SUMMARY:

Prevailing wage, as defined in Chapter 8 of the California Code of Regulations, Subchapter 3, Article 1 (\$16000) is 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.

In May, 2013, the City, through the Rules and Economic Development Committee¹ was asked to consider the adoption of an ordinance that applied the prevailing wage laws of the State of California, to the City of San Diego (City), and similar to the laws in a majority of other California Charter cities, including the City of Los Angeles.

At the time, the payment of prevailing wages was only required for City public works construction projects funded in whole or in part by state or federal funds or sewer or water projects whose estimated construction cost exceeded \$10 million. Under California Labor

¹ The Rules and Economic Development Committee is now the Economic Development and Intergovernmental Relations Committee.

Code §1720, public works is defined as the construction, alteration, demolition, installation or repair work done under a contract and paid for in whole or in part out of public funds ².

The Rules and Economic Development (R&ED) Committee requested the following actions take place for the recommended item:

1. Independent Budget Analyst (IBA) review City staff-prepared list of projects that would be subject to prevailing wage based upon the proposed ordinance, and provide an analysis of how much, on an average annual basis, this will cost or save the City.
2. City Attorney to provide legal analysis regarding Senate Bill 7, titled, "An act to add Section 1782 to the Labor Code, relating to public works," and the proposed ordinance, and return to R&ED Committee with an ordinance or resolution, as appropriate based on the legal analysis.
3. Staff to provide a report addressing questions raised by the IBA, as well as Councilmembers at the May 15, 2013 meeting.
4. Follow-up to be heard by the R&ED Committee on June 19, 2013.

On June 19, 2013, the R&ED Committee was presented with IBA report 13-26³, a memorandum⁴ from the City Attorney's Office, and Staff Report No. 13-051⁵ in response to items 1, 2, and 3 noted above, respectively. IBA report 13-26 outlined arguments for and against the ordinance; challenges in assessing the impacts of prevailing wages on infrastructure project costs (a conservative estimate showing the potential impact of a 5-10% increase on total project costs was included); and other relevant policy considerations. The item was presented to full Council on July 31, 2013, and was adopted.

Effective October 26, 2013, San Diego Municipal Code (SDMC) section 22.3019 was added relating to state prevailing wage laws. SDMC 22.3019 (c) states for contracts and task orders awarded, entered into, or extended on or after January 1, 2014, the City shall require compliance with California Labor Code sections 1770-1781, as may be amended for construction work over \$25,000 and for alteration, demolition, repair or maintenance work over \$15,000.

Senate Bill 7

Subsequent to the passage by the City Council of the Prevailing Wage Ordinance, Senate Bill 7 (SB 7)⁶ was approved by the Governor of California on October 13, 2013, and Section 1782 was added to the California Labor Code which contains language that prohibits a charter city from receiving state funding or financial assistance for a construction project if the city has a charter provision or ordinance that authorizes a contractor to not comply with prevailing wage requirements on any public works project. Further, Labor Code section 1782 provides that a charter city may receive or use state funding or financial assistance for its

² The full definition of public works is found here:

http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=LAB§ionNum=1720

³ IBA Report 13-26: https://www.sandiego.gov/sites/default/files/13_26_130618.pdf

⁴ City Attorney Memorandum: <http://docs.sandiego.gov/memooflaw/ML-2013-10.pdf>

⁵ Staff Report 13-051: <http://docs.sandiego.gov/reportstocouncil/2013/13-51.pdf>

⁶ Full text of Senate Bill 7 can be found here:

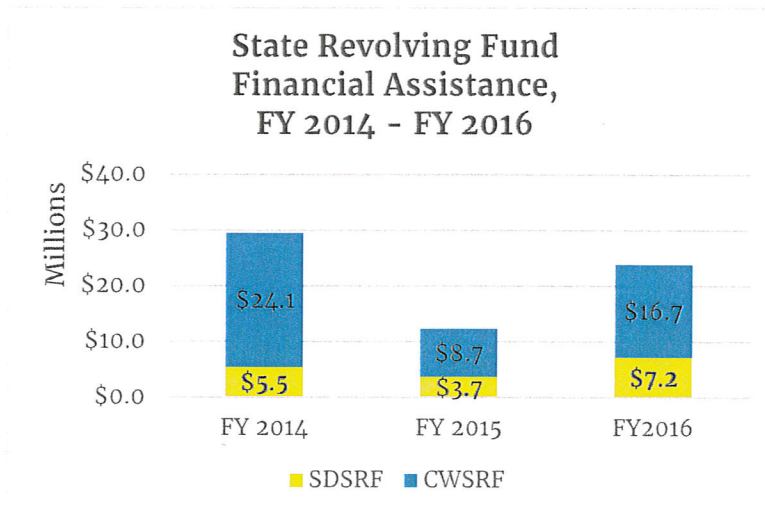
http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140SB7

construction projects if the charter city has a local prevailing wage ordinance for all its public works contracts that includes requirements that in all respects are equal to or greater than the requirements imposed by the provisions of existing law governing prevailing wage requirements for public works and that do not authorize a contractor to not comply with existing prevailing wage laws.

Since the adoption of Senate Bill 7, several charter cities including the cities of El Centro, Fresno, Vista, Carlsbad and El Cajon filed a writ of mandate and complaint for declaratory and injunctive relief against the State, challenging the constitutionality of Senate Bill 7⁷. The trial court entered a judgement in favor of the State. A Court of Appeal affirmed the trial court's judgement upholding the constitutionality of section 1782 on March 3, 2016.

State Funding for Sewer and Water Public Works Projects

The City has received \$65.9 million in funding from the Clean Water State Revolving Fund (CWSRF) and Safe Drinking Water State Revolving Fund (SDWSRF) over the last three fiscal years. This assistance could have potentially been denied had the City failed to comply with Senate Bill 7 and the adoption of the prevailing wage ordinance. The graph below shows the breakdown of the assistance received by funding source for each of the fiscal years.



Further, the Public Utilities Department has indicated that they anticipate applying for as many grants and/or loans available by the State in order to help finance the \$3.5 billion cost of the Pure Water Program. It is important to note that the City obtains state funding/financial assistance for other infrastructure public works projects including bridges and streets; however, pipeline projects have historically been the largest component of the Capital Improvements Program.

⁷ City of El Centro v. Lanier: <http://law.justia.com/cases/california/court-of-appeal/2016/d066755.html>

Senate Bill 854 Adds Additional Prevailing Wage Requirements

Senate Bill 854 (SB 854)⁸ was approved on June 20, 2014. It changed how the Department of Industrial Relations (DIR) monitors compliance with prevailing wage requirements and modified the responsibilities of awarding agencies. Some items went into effect immediately, while others were phased in.

Immediate changes included:

- Required the City to notify DIR when awarding a contract for a public works project, using the online PWC-100 form. This requirement applies to all public works projects, whereas it previously only applied to projects subject to apprenticeship requirements or DIR compliance monitoring requirements (Labor Code Section §1773.3).
- Eliminated the obligation to pay DIR for compliance monitoring on state bond-funded projects and other projects that required use of DIR's Compliance Monitoring Unit (CMU). This was previously waived for the City due to its approved LCP status with the State.

Phased-in changes included:

- Public Works Contractor Registration Program: All contractors and subcontractors who bid or worked on a public works project must have registered and paid an annual fee to the DIR.
 - March 1, 2015: No contractor or subcontractor could be listed on a bid proposal for a public works project unless registered with the DIR.
 - April 1, 2015: No contractor or subcontractor could be awarded a public works project unless registered with the DIR.

The biggest impact under this requirement was that an awarding body (such as the City) could not enter into a contract for public work with an unregistered contractor.

- Furnishing of Electronic Certified Payroll Records to Labor Commissioner: All contractors and subcontractors were required to furnish electronic certified payroll records directly to the Labor Commissioner (also known as the Division of Labor Standards Enforcement) according to a phased timetable. By January 1, 2016, all contractors that the City uses were required to furnish

⁸ Full text of Senate Bill 854: http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140SB854

electronic certified payroll records to the Labor Commissioner in their eCPR data system.

The DIR identified any projects monitored by the following legacy Labor Compliance Programs which are the California Department of Transportation (Caltrans), City of Los Angeles, Los Angeles Unified School District, and the County of Sacramento as being exempt to the payroll requirement. Projects covered by qualifying project labor agreements are also exempt at the Labor Commissioner's discretion. After the passage of SB 854, the Labor Commissioner notified all awarding bodies that they continue to share the responsibility of monitoring and enforcing compliance on public works projects and that there are potential legal consequences arising from failure to satisfy statutory obligations.⁹ The City has been required to enforce these additional State regulations through an unfunded mandate.

Compliance and Monitoring under Prevailing Wage Ordinance

The Post-Award Unit of the City's Equal Opportunity Contracting (EOC), consisting of one supervising management analyst and six associate management analysts are responsible for enforcement of the City's Labor Compliance Program (LCP)¹⁰ for contracts subject to prevailing wage. Labor Compliance Officers (LCOs) conduct a number of activities under the program, including:

- Attending Pre-Construction/Pre-Job Conference: After award of a contract and prior to construction or maintenance work commencing, the LCOs will participate in a pre-construction or pre-job conference where they will provide the contractor and their subcontractors with a Checklist of Labor Law Requirements and discuss in detail.
- Monitor Weekly Certified Payroll Records: LCO review weekly submitted payroll records for the prime contractor and all subcontractors within 30 days of receipt. Any discrepancies noted will be resolved pursuant to the appropriate labor code.
- Conduct Site Visits: LCO perform periodic unannounced visits for their assigned contracts where they conduct interviews of the workers on site and observe work being performed. Information collected is reconciled against payroll records submitted for that day.
- Monitor for Compliance with Apprenticeship Requirements: LCO ensure contractors and subcontractors have taken appropriate steps to include apprenticeship opportunities on their respective projects. Any unresolved discrepancies are reported to the Division of Apprenticeship Standards.

The table below provides quantitative information on the compliance activities conducted by staff during the last three fiscal years. As indicated, the workload has increased since the full implementation of the ordinance has taken place, especially in the area of Certified Payroll Reviews.

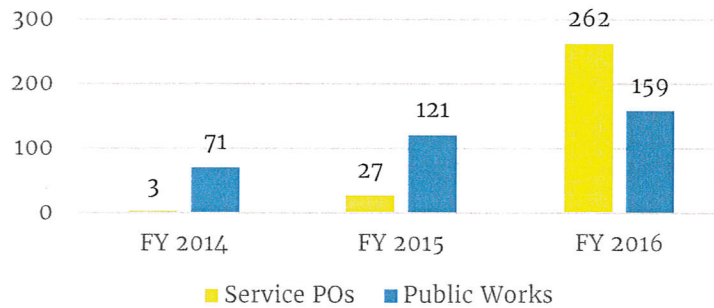
⁹ The Labor Commissioner's Precautionary Legal Notice to Awarding Bodies is found here: <http://www.dir.ca.gov/DLSE/PrecautionaryLegalNoticetoAwardingBodies.html>

¹⁰ City of San Diego Labor Compliance Program: <https://www.sandiego.gov/sites/default/files/legacy/eoc/pdf/laborcomp.pdf>

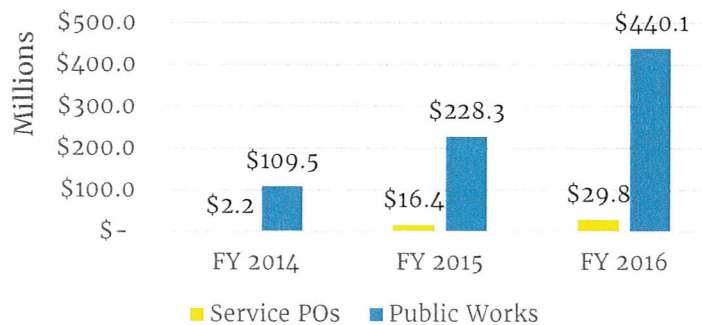
Compliance Activity	FY 2014	FY 2015	FY 2016
Pre-Construction/Pre-Job Meeting	133	154	290
Certified Payroll Reviews	3,022	8,185	9,387
Delinquency Notices Sent	0	82	45
Labor Code Violations			
Labor Code Violations Sent	0	69	40
Labor Code Monies Received	0	\$62,969	\$28,443
Project Site Visits			
Site Visits Conducted	178	421	167
Employee Interviews Conducted	222	556	238
Subcontractor Substitution Requests		18	24
Public Contract Code Violations	0	2	5

The graphs below show the amount of construction and service contracts that were awarded that included prevailing wage requirements for fiscal years 2014 – 2016.

Number of Contracts Subject to Prevailing Wage, FY 2014 - FY 2016



Value of Contracts Subject to Prevailing Wage, FY 2014 - FY 2016



Wages and Penalties Assessed and/or Recovered Under the Labor Compliance Program

While not identified as a legacy Labor Compliance Program (LCP) by the DIR after the passage of SB 854, the City's LCP was granted approval in January 2012, to continue operating its previously approved labor compliance program on projects subject to prevailing wage requirements. LCPs in the State of California are required to file annual reports with the Director of Industrial Relations within 60 days after the close of the City's annual reporting period. Information contained in the report includes a list of projects handled by the LCP within the past 12 months, summary of wages and penalties assessed and/or recovered, identification of projects for which an approval of forfeiture was not requested from the Labor Commissioner with an explanation, identification of projects for which approval of forfeiture as requested from the Labor Commissioner, identification of any cases that are or were the subject of Labor Code §1742 proceedings, and lastly identification of any contractors or subcontractors that were referred to the Division of Apprenticeship Standards (DAS) for apprenticeship violations.

The table below shows a cumulative representation of the detailed reports¹¹ that were submitted to the DIR for fiscal years FY 2014 – FY 2016.

	FY 2014	FY 2015	FY 2016
Number of projects handled by LCP in last 12 months ¹²	101	193	301
Cumulative award total of projects handled by LCP in last 12 months	\$592,759,621	\$441,739,211	\$844,804,065
Number of projects where wages and penalties were assessed and/or recovered	1	33	15
Cumulative total of amount where wages and penalties were assessed	\$507	\$90,551	\$2,334
Cumulative total of amount where wages and penalties were recovered	\$507	\$90,551	\$2,334
Number of instances where wages and penalties were assessed but approval of forfeiture by Labor Commissioner was not requested	1	36	15
Amount of wages and penalties recovered where approval of forfeiture by Labor Commissioner was not requested	\$507	\$43,643	\$2,072
Amount of penalties assessed for which approval of forfeiture was requested from the Labor Commissioner	\$0	\$66,517	\$63,000
Amount of penalties recovered for which approval of forfeiture was requested from the Labor Commissioner	\$0	\$44,317	\$21,000
Number of cases that are or were the subject of Labor Code §1742 proceedings	0	1	0

¹¹ Labor Compliance Annual Reports submitted by the City of San Diego can be located here: <http://www.dir.ca.gov/lcp/annualreports.asp>

¹² Projects reported to the DIR reflect Public Works construction contracts only.

Number of contractors or subcontractors referred to the Labor Commissioner for debarment	0	0	0
Number of contractors or subcontractors referred to the DAS for apprenticeship violations	0	17	10

City's Labor Compliance Program Compared to Legacy Labor Compliance Programs

The DIR has recognized four agencies in the State of California as legacy labor compliance programs (LCPs) and were exempted from requiring contractors and subcontractors from submitting electronic certified payroll records to the Labor Commissioner after the passage of Senate Bill 854. These agencies are the California Department of Transportation (Caltrans), City of Los Angeles, Los Angeles Unified School District, and the County of Sacramento. Because the Prevailing Wage Ordinance is relatively new and has increased the work load for staff performing compliance monitoring activities, a brief benchmarking study was completed to determine how well the City's LCP program fared against the legacy LCPs and help identify any areas for improvement.

	City of San Diego	City of Los Angeles	Los Angeles Unified School District	California Department of Transportation (Caltrans)	County of Sacramento
Date of LCP approval	2009	1998	1993	1990	1993
# of contracts awarded during FY 2016	159	62	694	428	222
Total contract awards for FY 2016	\$440 M	\$557.5 M	\$104.8 M	\$2.3 Billion	\$594.6 M
# of staff in LCP	1 Supervisor 6 Associates	1 Supervisor 5 Seniors 17 Analysts	1 Administrator 3 Seniors 13 LCOs 2 Admin 1 Tech	7 Managers 34 LCOs	5 LCOs 1 Admin 80 Inspectors ¹³
Average # of contracts assigned to LCO for monitoring	65-75	30	25-35	20-30	20-40
Utilization of Compliance Monitoring Software	Yes – PRISM	Yes – OCPS (custom software)	Yes – Internal reporting system	No – Manual reviews conducted	No – Manual reviews conducted
Staff responsible for conducting site visits and employee interviews	Associates	Analysts	LCOs, Work preservation groups, Site Inspectors	Daily Inspectors or Resident Engineers	Inspectors

¹³ The inspectors' role in the LCP is to conduct site visits and employee interviews, they are not involved with the review of certified payroll records.

During FY 2017, designated staff will be visiting with 3 of the 4 Legacy LCPs to discuss best practices for implementation. The goal is to have staff increase their understanding of prevailing wage monitoring requirements, identify strategies for effective project monitoring, and implement changes where necessary to ensure continued success for the City's LCP.

Compliance Monitoring Improvements

In order to help curb technical assistance requests from callers on a daily basis, training is offered to help vendors gain a better understanding of prevailing wage laws and also to help them navigate within the City's labor compliance software PRISM®. This hands on training is held at one of the various computer labs bi-monthly and is open to all vendors or contractors, regardless of contract size.

PRISM® allows vendors and contractors to submit their certified payroll records electronically. Further, with the new requirements under SB 854, EOC staff worked with the PRISM software developers to improve the application to allow easier compliance with City and State requirements. As contractors must submit electronic payroll records to the DIR, PRISM® allows users to enter information into the system, export the information and then upload directly to the DIR. This helps avoid duplicative efforts for vendors and contractors, and ensures both agencies are receiving the same information.

As noticed previously in the report, staff is required to present labor law requirements at pre-construction/pre-job conferences for all contracts subject to prevailing wage. In order to avoid travel time to/and from the various Citywide locations in which these meetings are held, staff has implemented GoTo® meetings. GoTo® meetings can be scheduled at any time, helping to accommodate vendors or contractors who may not have the time or staffing to attend on-site meetings. This also helps to eliminate an hour of travel time for staff to attend a meeting in which they spend 15-20 minutes going over labor law requirements.

Lastly, EOC conducts prevailing wage training for City departments and staff who may be new to the procurement process. Training helps educate City staff on what prevailing wage is, when it applies, and how to find appropriate wage determinations when applicable.

Conclusion

The City's EOC program will continue to strengthen the monitoring activities under the Labor Compliance Program for all contracts subject to prevailing wage requirements. With the implemented State requirements and the City's continuing focus on infrastructure, resources will be maximized. However, utilizing best practices and establishing relationships with other governmental agencies to create synergies will only help achieve better monitoring and enforcement on City projects and improve the City's LCP.

CITY STRATEGIC PLAN GOAL(S)/OBJECTIVE(S):

Goal # 3: Create and sustain a resilient and economically prosperous City.

Objective # 3: Diversify and grow the local economy.

FISCAL CONSIDERATIONS:

N/A

EQUAL OPPORTUNITY CONTRACTING INFORMATION (if applicable):

N/A

PREVIOUS COUNCIL and/or COMMITTEE ACTIONS:

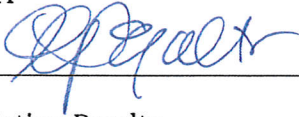
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COMMUNITY PARTICIPATION AND OUTREACH EFFORTS:

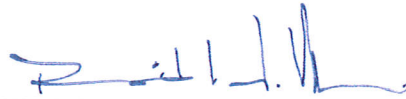
N/A

KEY STAKEHOLDERS AND PROJECTED IMPACTS:

N/A



Kristina Peralta
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Ronald H. Villa
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