

PREVAILING WAGE REPORT FOR RULES COMMITTEE: STAFF FUNCTIONS AND COSTS

RESPONSIBILITIES

For the City of San Diego, Equal Opportunity Contracting (EOC) is responsible to oversee prevailing wage requirements on public works projects. Specialists in EOC's Labor Compliance unit 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.

FUNCTIONS

When prevailing wages are required, the Public Works Chapter of the California Labor Code (§§1720-1861) and Title 8, Division 1, Chapter 2 of the California Code of Regulations mandate performance of the following functions by the awarding agency:

- Bid invitations and documents must contain appropriate contract language; applicable prevailing wages are determined by the bid advertisement date.
- Pre-construction conferences must be held with the contractor and subcontractors to discuss applicable law, procedures, record keeping, wage determinations, apprentice requirements and required form filing.
- Labor Compliance Officers must receive weekly certified payroll reports from the contractor and subcontractors at a frequency designated in the contract (typically calls for monthly submissions).
- Resident engineers and/or project managers must maintain daily diaries of activities at each project site including names of firms and their personnel.
- Labor Compliance Officers must perform Labor Standards interviews with employees of contractors and subcontractors at the project site and maintain records of these interviews.
- Labor Compliance Officers must compare and analyze certified payroll reports, daily diaries, *Monthly Employment Reports*, Labor Standards interviews and any other relevant information to determine correct classifications and wages for employees of contractors and subcontractors.

- Labor Compliance Officers must request clarification of classifications and wages from the Department of Industrial Relations, when required.
- Labor Compliance Officers must review proper submission of apprenticeship forms and ratio of apprentice-to-journey level hours.
- Labor Compliance Officers must conduct investigations in response to requests from employees of contractors and subcontractors and/or certified payroll report discrepancies.
- Labor Compliance Officers must audit firms' payroll records to verify compliance with the Public Works Chapter of the Labor Code, when required.
- Labor Compliance Officers must require the agency to withhold contract payments when certified payroll reports are delinquent or inadequate, and contracts must contain a provision stating this requirement.
- Labor Compliance Officers must issue and serve *Notices of Withholding of Contract Payments* (NWCP's) and defend NWCP's in administrative review proceedings and in court.
- Labor Compliance Officers must require the agency to withhold contract payments equal to the amount of underpayment and applicable penalties when an investigation concludes an underpayment has occurred.
- Labor Compliance Officers must request and disburse wages and penalties.
- Labor Compliance Officers must obtain approval of recommended forfeitures from the Labor Commissioner.
- Labor Compliance Officers must require the agency to impose sanctions for willful violations of the Labor Code.
- The Labor Compliance Office must provide an annual report to the Labor Commissioner and the City Manager.

VOLUME OF PREVAILING WAGE PROJECTS

Currently, the City public works projects require prevailing wages when federally- or state-funded, if they are non-municipal in nature or if the Council finds sufficient evidence to apply prevailing wages to a specific project as in the case of the Miramar Treatment Plant project.

ATTACHMENT 2

Metropolitan Wastewater Department's projects generally require prevailing wages due to either or both of these causes. Of the Water Department's two upcoming Water Treatment Plants Miramar has been determined by Council to qualify for prevailing wages and Alvarado has preliminary been identified by the Council's Natural Resources and Cultural Committee to also qualify for prevailing wages provisions. Engineering and Capital Projects Department has applied prevailing wages only in the case of federal or state funds.

The City of San Diego has 115 active construction projects. Of these, 41% require prevailing wages, primarily due to the origin of their funding:

Active Projects	Cost of Projects		Number of Projects	
Prevailing Wage	\$102,182,874	35%	47	41%
Non-Prevailing Wage	<u>\$194,266,110</u>	<u>65%</u>	<u>68</u>	<u>59%</u>
Total	\$296,448,984	100%	115	100%

Of these active projects, the various types requiring prevailing wages could be grouped together in several general categories as shown in the following table:

Types of Prevailing Wage Projects	Number of Projects	
Playgrounds, parks, beaches	15	32%
Traffic signals & lighting	14	31%
Metropolitan Wastewater Department	8	17%
Streets, curbs, erosion control	5	10%
Miscellaneous (library, group job, pump station)	<u>5</u>	<u>10%</u>
Total	47	100%

A view of identified upcoming projects forecasts a greater preponderance of those requiring prevailing wage:

Upcoming Projects	Number of Projects
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Prevailing Wage	37	59%
Non-Prevailing Wage	<u>26</u>	<u>41%</u>
Total	63	100%

OTHER FACTORS

Other factors contribute to a need for additional monitoring of prevailing wage issues. In February 2002, California Labor Code Section 1777.7 was amended to set apprentice pay scales at a percentage of prevailing wages on both public and private projects, affecting municipal and non-municipal City public works. In March 2002, City Council directed EOC to oversee a requirement for mandatory usage of apprentices on all City projects over \$1,000,000 at the ratio set by each trade's collective bargaining agreement. The Labor Compliance unit performs this oversight.

Additionally, the City Attorney's Office opined in a memo dated November 16, 2001, (Subject: Prevailing Wage Applicability After Labor Code Amendment) that the California Labor Code's recent amendment to apply prevailing wages to design and pre-construction activities "does include inspectors and land surveyors. It may also include those performing geological testing, drilling and soil density testing, as well as others performing preconstruction or design activities..." This memo also cautions, "It is possible that the Amendment may decrease the number of projects with pre-construction activities considered to be municipal affairs.

The impact has not yet been determined for new legislation which took effect in January 2002. The definition of "public works" was significantly expanded by SB 975 (Senate Bill No. 975, approved by Governor, October 14, 2001) to include private projects that receive public agency assistance.

Staffing levels will be affected by the City's need to apply and monitor prevailing wage requirements for apprentices, design and pre-construction activities, and, possibly, redevelopment-type projects and other projects affected by SB 975.

STAFF LEVELS

Equal Opportunity Contracting restructured at the start of this calendar year to create a dedicated Labor Compliance unit. Although the original implementation plan called for a Supervising Management Analyst, six Associate Analysts and two Clerical Assistants,

budget constraints resulted in a team comprised of a Supervising Analyst, four Associate Analysts and one Clerical Assistant II.

The City of Los Angeles, as required by its charter, requires prevailing wages and serves as a comparison for San Diego’s Labor Compliance unit. By volume, the City of Los Angeles performs approximately one-third more projects each year than the City of San Diego and employs two-thirds more staff (for labor compliance monitoring). Los Angeles’ Labor Compliance Section is composed of sixteen staff members compared to only six staff members in San Diego, with the disparity based, in part, on Los Angeles’ requirement of prevailing wage on all projects verses San Diego’s limited use of prevailing wage.

	City of Los Angeles	City of San Diego
Number of projects	350	210 (includes non-prevailing wage projects)
Staffing:		
Program Manager	1	-
Supervising Analyst	2	1
Senior Analyst	8	4
Associate Analyst	2	-
Senior Clerk	<u>1</u>	<u>1</u>
Clerical Assistant II	16	6
Total		

If the City of San Diego increases the volume of projects requiring prevailing wages there will be an effect on staffing levels. Current staffing level is already strained to meet existing demands. Recommended staff is as shown:

Labor Compliance Staff	Current	Increase	Total
Supervising Analyst	1	-	1
Senior Analyst	-	1	1
Associate Analyst	4	3	7
Word Processor	-	1	1
Clerical Assistant II	<u>1</u>	<u>-</u>	<u>1</u>
Total	6	5	11

Increased personnel and non-personnel costs for additional staff requested are as shown:

Classifications	Increase	Total Expenditure (PE + NPE)
Senior Analyst	1	\$ 84,412
Associate	3	\$ 226,779
Analyst	<u>1</u>	<u>\$ 47,479</u>
Word Processor	5	\$ 358,670
Total		

CONTRACTOR ADMINISTRATIVE COSTS

Prevailing wage projects impose an additional administrative cost on contractors and their subcontractors, as well, although the net effect of this cost is arguably negligible in many cases. If a contractor is experienced with maintaining certified payroll records, obviously less impact will be felt. If, however, a contractor is unfamiliar with certified payroll processes a distinct learning curve will occur.

Labor Compliance staff provide technical assistance, but a contractor's organizational abilities are paramount in performance of required record-keeping. Some contractors have stated they found it necessary to increase their office staff to comply. Increased diligence in maintaining payroll records benefits a project's overall efficiency and, over time, contributes to a contractor's professional capabilities.

These administrative contractor costs are incurred by all bidders on a prevailing wage project.