

## Public Works Contracts and SB 854

Procurement and contracting for public works projects<sup>1</sup> involve significant requirements for JBEs and contractors relating to prevailing wage, including, but not limited to the following pursuant to SB 854 (Stat. 2014, Ch. 28):

- All bidders for public works contracts and their respective subcontractors must be registered with the Department of Industrial Relations (DIR).<sup>2</sup> A bid shall not be accepted nor any contract or subcontract entered into for a public works project without proof of the contractor or subcontractor's current registration with the DIR.<sup>3</sup>
- A PWC 100 form must be filed by a JBE with the DIR within five days of the award of a public works contract.<sup>4</sup> PWC 100 forms can be submitted electronically to the DIR at: <https://www.dir.ca.gov/pwc100ext/>
- Required provisions for bid documents and contracts for public works projects.<sup>5</sup> (The yellow highlighted provisions below relate to SB 854 requirements.)

Additional requirements relating to prevailing wage apply to public works projects, including their bid documents and contracts. If you would like further information, please contact the Judicial Council's Legal Services office, or visit the DIR's Public Works website (<http://dir.ca.gov/Public-Works/PublicWorks.html>).<sup>6</sup>

Below are sample provisions for public works contracts that require payment of prevailing wage (conforming edits may be necessary to incorporate into the JBE's specific contract):

- (1) The Contractor shall comply with all applicable provisions of the California Labor Code, Division 2, Part 7, Chapter 1, Articles 1 - 5, including, without limitation, the payment of the general prevailing per diem wage rates for public work projects of more than one thousand dollars (\$1,000). Copies of the prevailing rate of per diem wages are on file with the JBE. In addition, the Contractor and each subcontractor shall comply with Chapter 1 of Division 2,

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<sup>1</sup> Under the California Labor Code, public works include, for example, construction, alteration, demolition, installation, repair, or maintenance work that is paid for in whole or in part out of public funds (Labor Code §§ 1720(a)(1) and 1771). Public works also include, but are not limited to, carpeting (Labor Code § 1720(a)(5)), refuse hauling (Labor Code § 1720.3), and the assembly and disassembly of freestanding and affixed modular office systems (Labor Code § 1720(a)(1)).

<sup>2</sup> Labor Code §§ 1771.1 and 1725.5.

<sup>3</sup> Labor Code § 1771.1(b). Please also note that under Labor Code § 1771.4(a)(2), the JBE awarding the contract shall post or require the prime contractor to post job site notices as prescribed by regulation. (For information on the current regulation, contact the DIR.)

<sup>4</sup> Labor Code § 1773.3.

<sup>5</sup> Labor Code §§ 1771.1(b) and 1771.4(a)(1).

<sup>6</sup> This external link is being provided for general information purposes only. The Judicial Council does not warrant the accuracy, availability, or completeness of the information on the DIR website.

Part 7 of the California Labor Code, beginning with section 1720, and including section 1735 forbidding discrimination, section 1776 pertaining to payroll records, and sections 1777.5 and 1777.6 concerning the employment of apprentices by Contractor or subcontractors. Willful failure to comply may result in penalties, including loss of the right to bid on or receive public works contracts.

- (2) The Contractor and all subcontractors shall pay all workers on work performed pursuant to this Agreement not less than the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work as determined by the Director of the Department of Industrial Relations, State of California, for the type of work performed and the locality in which the work is to be performed, pursuant to sections 1770 et seq. of the California Labor Code. Copies of the general prevailing rates of per diem wages for each craft, classification, or type of worker needed to execute the Agreement, as determined by Director of the State of California Department of Industrial Relations, are on file at the JBE's principal office. Prevailing wage rates are also available from the JBE or on the internet at (<http://www.dir.ca.gov>).
- (3) Contractor shall comply with the registration and compliance-monitoring provisions of Labor Code section 1771.4, including furnishing its certified payroll records to the Labor Commissioner of California and complying with any applicable enforcement by the Department of Industrial Relations. Labor Code section 1771.1(a) states the following:

"A contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, as defined in this chapter, unless currently registered and qualified to perform public work pursuant to Section 1725.5. It is not a violation of this section for an unregistered contractor to submit a bid that is authorized by section 7029.1 of the Business and Professions Code or by section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded."  
***[NOTE: the foregoing paragraph must also be included in all bid invitations for public works contracts]***
- (4) Contractor shall, and shall ensure that all "subcontractors" (as defined by Labor Code section 1722.1), comply with Labor Code section 1725.5, including without limitation the registration requirements with the Department of Industrial Relations that are set forth in Labor Code section 1725.5. Contractor represents to the Judicial Council that all "subcontractors" (as defined by Labor Code section 1722.1) are registered pursuant to Labor Code section 1725.5. Contractor acknowledges that, for purposes of Labor Code section 1725.5, this work is a public work to which Labor Code section 1771 applies.
- (5) This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations. Contractor shall post job site notices, as prescribed by regulation. Contractor shall comply with all requirements of Labor Code section 1771.4, except the requirements that are exempted by the Labor Commissioner for the project.
- (6) Unless otherwise provided in this Agreement, the Contractor shall provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the work, whether temporary or permanent and whether or not incorporated or to be incorporated in the work. Materials, articles and equipment furnished by the

Contractor for incorporation into the work shall be new unless otherwise specified in the Agreement.

- (7) Workers are limited and restricted to 8 hours during any one calendar day, and 40 hours during any one calendar week except that pursuant to Labor Code Section 1815, any work performed in excess of 8 hours per day and 40 hours during any one week, shall be permitted upon compensation for all hours worked in excess of 8 hours per day at not less than 1-1/2 times the basic rate of pay. Pursuant to Labor Code section 1813, the Contractor shall pay the JBE twenty five dollars (\$25) as a penalty for each worker for each calendar day worked in violation of the above limitations and restrictions.
- (8) The Contractor shall comply with the provisions of the Labor Code including sections 1770 to 1780, inclusive and specifically Section 1775. In accordance with Section 1775, the Contractor shall forfeit to the JBE the statutory amount, (currently not to exceed two hundred dollars (\$200) for each calendar day, or portion thereof), for each worker paid less than the prevailing rates, as determined by the JBE, for the work or craft in which that worker is employed for any work done under contract by Contractor or by any subcontractor.
  - (a) The amount of the penalty shall not be less than forty dollars (\$40) for each calendar day, or portion thereof, unless the failure of Contractor or subcontractor was a good faith mistake and, if so, the error was promptly and voluntarily corrected when brought to the attention of Contractor.
  - (b) The amount of the penalty shall not be less than eighty dollars (\$80) for each calendar day or portion thereof, if Contractor or subcontractor has been assessed penalties within the previous three (3) years for failing to meet its prevailing wage obligations on a separate contract, unless those penalties were subsequently withdrawn or overturned.
  - (c) The amount of the penalty may not be less than one hundred twenty dollars (\$120) for each calendar day, or portion thereof, if the Labor Commissioner determines the Contractor or subcontractor willfully violated Labor Code section 1775.
  - (d) The difference between such prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate shall be paid to each worker by Contractor or subcontractor.
- (9) Wage rates set forth are the minimum that may be paid by the Contractor. Nothing herein shall be construed as preventing the Contractor from paying more than the minimum rates set. No extra compensation whatsoever will be allowed by the JBE due to the inability of the Contractor to hire labor at minimum rates, nor for necessity for payment by the Contractor of subsistence, travel time, overtime, or other added compensations, all of which possibilities are elements to be considered and ascertained to the Contractor's own satisfaction in preparing its proposal.
- (10) If it becomes necessary to employ a craft, classification or type of worker other than those listed on-line at <http://www.dir.ca.gov/oprl/DPreWageDetermination.htm>, the Contractor shall contact the Division of Labor Statistics and Research to find the appropriate prevailing wage determination. If the Division of Labor Statistics and Research is unable to identify a determination that is applicable, the Contractor shall notify the Court immediately, and the Court will request a special determination from the Division of Labor Statistics and Research. The rate thus determined shall be applicable from the commencement of the project.

- (11) The Contractor and each subcontractor shall keep an accurate payroll record showing the names, addresses, social security numbers, work classifications, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by the Contractor and/or subcontractor in connection with the work. Payroll records shall be certified and shall be on forms provided by the Division of Labor Standards Enforcement, or shall contain the same information as those forms. Upon written request by the JBE, the Contractor's and subcontractor's certified payroll records shall be furnished within ten (10) days. The Contractor's and subcontractor's certified payroll records shall be available for inspection at the principal office of the Contractor.
- (12) Contractor shall pay travel and subsistence payments to persons required to execute the work as travel and subsistence payments are defined in applicable collective bargaining agreements filed with the Department of Industrial Relations, pursuant to Labor Code, Sections 1773.1 and 1773.9.
- (13) Contractor acknowledges and agrees that, if this Agreement involves a dollar amount or any other threshold, if any, greater than those specified in Labor Code section 1777.5, then this Agreement is governed by the provisions of Labor Code section 1777.5. It shall be the responsibility of Contractor to ensure compliance with Labor Code section 1777.5 for all apprenticeship occupations. If Labor Code section 1777.5 applies, then:

Contractor shall only employ properly registered apprentices in the execution of the work. Every apprentice shall be paid the standard wage paid to apprentices under the regulations of the craft or trade at which the apprentice is employed, and shall be employed only at the work of the craft or trade to which the apprentice is registered.