

CITY OF COSTA MESA

Department of Public Services/Administration

INTER OFFICE MEMORANDUM

TO: Honorable Members of the Charter Committee

FROM:  Ernesto Munoz, Public Services Director

DATE: August 22, 2013

SUBJECT: LABOR COMPLIANCE PROCEDURES

In response to Charter Committee Member's comments and concerns relative to the City's policies and procedures as they pertain to Labor Law compliance, this memorandum provides a brief overview of the Public Services Department's procedures to ensure that all contractors and/or subcontractors hired by the City are in compliance with the contract's documents.

In general, for public works construction, the Contractor shall be bound by, and comply with, all the applicable provisions of the Labor Code and Federal, State, and local laws as they relate to labor compliance. These provisions are part of the contract documents and are provided to the bidders prior to the public bid opening and include the Davis-Bacon Provisions and Disadvantage Business Enterprise (DBE) compliance (if the project is federally funded). In addition, the Contractor is obligated to maintain in full force, for the duration of the contract, workers' compensation insurance. This includes the requirement that the Contractor submit certification to the City to acknowledge that they are fully aware of the workers' compensation requirements needed to be complied with prior to the start of any work.

Once the bids are opened, City staff reviews them to ensure the bidders are in compliance with all the above provisions and that their bids are responsive.

After a contract is awarded and prior to commencement of the work, City staff conducts a mandatory Pre-Construction Conference with the contractor.

At the Pre-Construction Conference, staff discusses Federal and State labor law requirements applicable to the contract in detail, including prevailing wage requirements, respective record-keeping responsibilities, the requirement for submittal of certified payroll records to the City, and the prohibition against discrimination in employment.

Staff provides the contractor and each subcontractor with a Checklist of Labor Law Requirements and discusses in detail the requirements of the following statutes:

1. Contractor's duty to pay prevailing wages [Labor Code Section 1770 *et seq.*].
2. Contractor's duty to employ registered apprentices on public works projects [Labor Code Section 1777.5].
3. Penalties for failure to pay prevailing wages and to employ apprentices, including forfeitures and debarment [Labor Code Sections 1775, 1777.7, and 1813].
4. Requirement to maintain and submit copies of certified payroll records to the City, as required [Labor Code Section 1776(g)]. The requirement includes and applies to all subcontractors performing work on this project even if their portion of the work is less than one half of one-percent (0.5%) of the total amount of the contract.
5. Prohibition against employment discrimination [Labor Code Sections 1735 and 1777.6; the Government Code and Title VII of the Civil Rights Act of 1964, as amended].
6. Prohibition against taking or receiving a portion of an employee's wages [Labor Code Section 1778] (kickback).
7. Prohibition against accepting fees for registering any person for public works [Labor Code Section 1779] or for filing work orders on public works [Labor Code Section 1780].
8. Requirement to list all subcontractors that are performing one-half of one percent (0.5%) of the total amount of the contract [Public Contract Code Section 4100 *et seq.*].
9. Requirement to be properly licensed and to require all subcontractors to be properly licensed and the penalty for employing workers while unlicensed [Labor Code Section 1201] and under California Contractors License Law. Also, see Business and Professions Code Section 7000, *et seq.*
10. Prohibition against unfair competition [Business and Professions Code Section 17200].
11. Requirement that contractor and subcontractor be properly insured for Worker's Compensation [Labor Code Section 1861].
12. Requirement that the contractor abide by Occupational Safety and Health laws and regulations that apply to this particular public works project.
13. Prohibition against hiring undocumented workers and requirement to secure proof of eligibility/citizenship from all workers.
14. Requirement to provide itemized wage statements to employees under Labor Code Section 226.

Contractors and subcontractors present at the Pre-Construction Conference are given the opportunity to ask questions relative to the Labor Law statutes.

Upon the start of construction, City staff will:

Conduct in-person inspections at sites where public work is being performed.

Public Services staff conducts weekly on-site random visits as deemed necessary, to interview workers present at the jobsite. On-site visits allow City staff to corroborate prevailing wage payments reported on payroll records furnished by contractors and subcontractors. All on-site visits include inspection of proper labor law notices (posters) required to be posted at the jobsite in plain sight of the work force.

Review payroll records

All certified payroll records furnished by contractors and subcontractors are reviewed as promptly as practicable. The review of payroll record is to determine if:

- A. All appropriate data elements identified in the Labor Code have been reported;
- B. Certification forms have been completed and signed;
- C. Correct prevailing wage rates have been reported as paid for each classification of labor listed, with confirmation of payment through worker interviews, examination of paychecks or paycheck stubs, or any other reasonable method.
 - 1) For each month a contractor or subcontractor reports workers employed on the public works project, confirmation of furnished payroll records will be undertaken randomly for at least one worker for at least one weekly period within that month.
 - 2) Confirmation will be undertaken whenever complaints from workers or other interested persons or other circumstances or information reasonably suggest payroll records furnished by a contractor or subcontractor are inaccurate.

For federally-funded projects, if a complaint is received, an investigation is performed by staff and the findings are compiled for review and action by the labor compliance officer with the Federal Department of Labor. Complaints relating to any other prevailing wage projects are handled by the California Department of Labor.

The City of Costa Mesa, through its Construction Management section in the Engineering Division of the Public Services Department, provides the oversight required to ensure Labor Law requirements are met for all state and federally-funded public works contracts. This process has resulted in minimal complaints filed over the years, and adequately ensures compliance with the applicable statutes.

c: Honorable City Council
Thomas R. Hatch, Chief Executive Officer
Rick Francis, Assistant Chief Executive Officer