# 2022 Southern California Prevailing Wage Webinar Series

Co-Hosted By
The Labor Commissioner's Office
& The Center for Contract Compliance

Facilitators: Center for Contract Compliance & CA Labor Commissioner's Office
Date: July 21, 2022
Time: 9 AM – 3:30 PM
Location: Zoom

| | Agenda Items | Speaker(s) |
|---|---|---|
| **9 AM – 9:20** | Welcome and Opening Remarks | CCC |
| **9:20 – 10:25** | Office of the Director – Legal Unit: Coverage | Isaac Nicholson |
| **10:25 – 10:40** | Break | |
| **10:40 – 11:00** | Pre-Qualification of Contractors | Susan Weaver |
| **11:00 – 11:30** | Awarding Body Responsibilities | Sara Brown |
| **11:30 – 12:00** | Lunch | |
| **12:00 – 12:45** | Skilled & Trained Workforce | Christopher Hightower |
| **12:45 – 2:15 PM** | Contractor Responsibilities | Eric Raktiprakorn<br>Alfredo Roman |
| **2:15 – 2:30** | Break | |
| **2:30 – 2:40** | DIR Labor Enforcement Task Force (LETF) | Christine Muraoka |
| **2:40 – 3:20** | Labor Commissioner's Office – Legal Unit: Hot Topics | William Snyder<br>David Cross |
| **3:20 – 3:30** | Closing Statements | All |

## Additional information

Download Webinar Materials: www.socalccc.org/webinar-2022

# Public Works

State of California

## Department of Industrial Relations

Department of Industrial Relations
STATE OF CALIFORNIA

# *DISCLAIMER*

The following presentation is intended to summarize relevant portions of existing law in the Labor Code and California Code of Regulations, but those code sections, as interpreted by the courts, will govern actual enforcement. The information contained in this presentation is a general overview of existing law, and is not intended to amend, interpret, or make specific any existing law or regulation. Any opinions expressed are solely those of the author/speaker and are not necessarily the official position of the Department of Industrial Relations (DIR), its Director, or any related public entity. The information in this presentation is not intended as legal advice, and does not guarantee any outcome in specific enforcement or coverage proceedings within the jurisdiction of DIR.

## Divisions, Boards and Commissions at DIR

- **Office of the Director – Legal Unit (OD Legal)**
  - Assists the Director with drafting coverage determinations
  - Acts as hearing officers for appeals of wage/penalty assessments
- **Office of Policy, Research and Legislation (OPRL)**
  - Issues Prevailing Wage Determinations
- **Division of Labor Standards Enforcement (DLSE) ("Labor Commissioner's Office")**
  - Enforces prevailing wage and apprenticeship laws
- **Division of Apprenticeship Standards (DAS)**
  - Administers apprenticeship laws, programs, and standards
  - Approves apprenticeship programs

Department of Industrial Relations

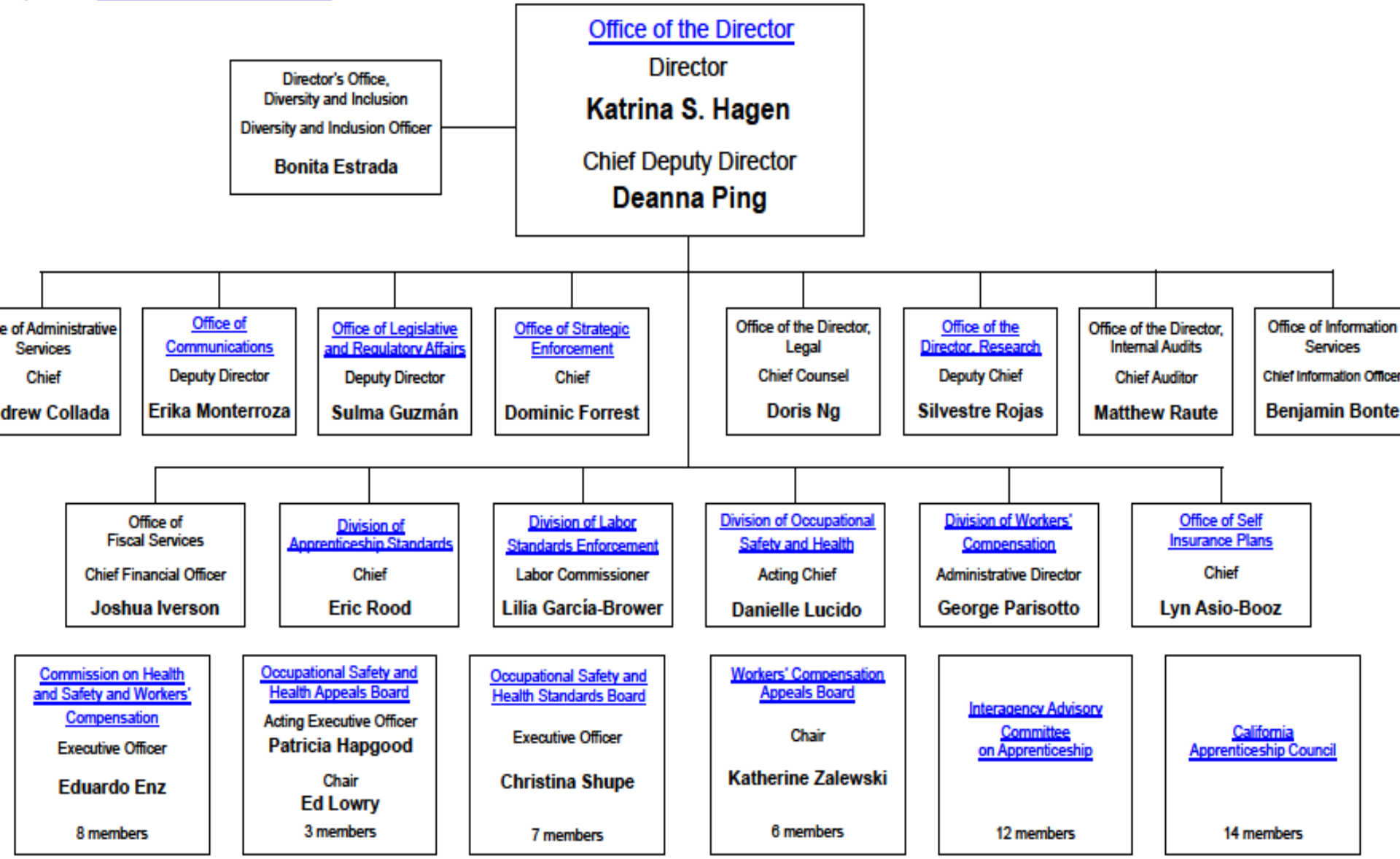
Quick Links
- LETF Home
- Report a labor law violation
- Report a workplace hazard to Cal/OSHA
- File a wage claim
- Know my employment rights
- Know my rights as an injured worker
- Get workplace postings
- Find prevailing wage determinations

Also of Interest
- Industrial Relations databases
- Subscribe to a distribution list
- Work for DIR
- Do business with DIR

Other Resources
- California Labor & Workforce Development Agency
- Employment Development Department
- U.S. Dept. of Labor

# Department of Industrial Relations

Department of Industrial Relations Director reports to California Labor and Workforce Development Agency Secretary Natalie Palugyai who in reports to Governor Gavin Newsom.



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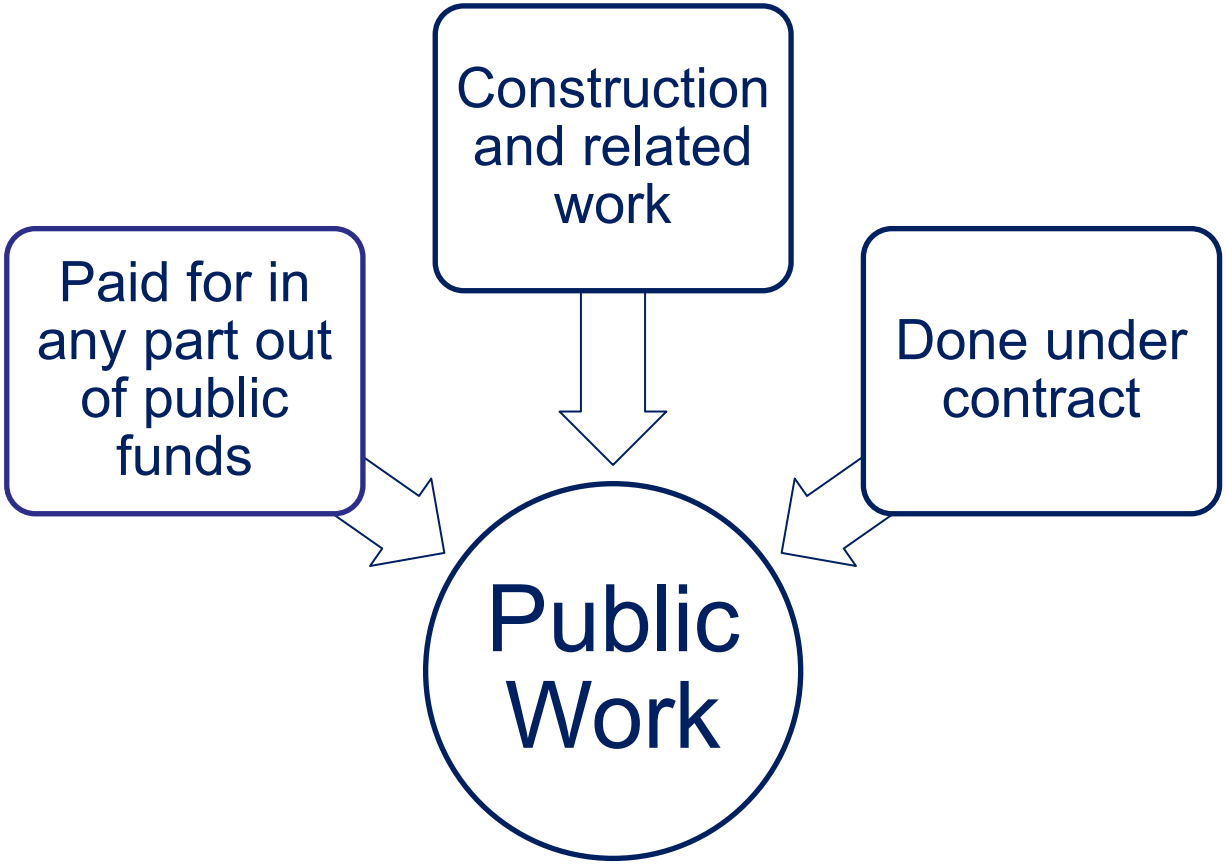
# Labor Code Section 1771

Except for public works projects of one thousand dollars ($1,000) or less, not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the public work is performed, and not less than the general prevailing rate of per diem wages for holiday and overtime work fixed as provided in this chapter, shall be paid to all workers employed on public works.

This section is applicable only to work performed under contract, and is not applicable to work carried out by a public agency with its own forces. This section is applicable to contracts let for maintenance work.

**Prevailing wages apply to all public works over $1,000, unless there's an exception.**


Construction and related work
Paid for in any part out of public funds
Done under contract
Public Work

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# Labor Code Section 1720

**(Labor Code 1720(a)(1))**

**(a) As used in this chapter, "public works" means:**

**(1) Construction, alteration, demolition, installation, or repair work done under contract and paid for in whole or in part out of public funds…**

- Construction (includes preconstruction *and* post construction) [AB 1768]
- Alteration
- Demolition
- Installation
- Repair
- Maintenance (Labor Code section 1771, 8 CCR 16000)

Other definitions of "public works"

**Section 1720(a)**

1) Standard definition: (Construction work done under contract paid for in any part out of public funds)

2) "Work done **for irrigation, utility, reclamation, and improvement** districts, and other districts of this type." (*Kaanaana v. Barrett Business Services*)

3) "**Street, sewer, or other improvement work** done under the direction and supervision or by the authority of any officer or public body of the state, or of any political subdivision or district . . ."

Other definitions of “public works”

**Section 1720(a)**

4)The **laying of carpet done under a building lease-maintenance contract** and paid for out of public funds.

5)The **laying of carpet in a public building** done under contract and paid for in whole or in part out of public funds.

**6)Public transportation** demonstration projects (Streets and Highways Code s 143)

7)(A) **Infrastructure project grants** from the California Advanced Services Fund pursuant to Section 281 of the Public Utilities Code.

8)Tree removal work done in the execution of a project under paragraph (1)

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## Paid for in whole or in part out of public funds

**(Labor Code 1720(b))**

1. The payment of money or the equivalent of money . . . directly to or on behalf of the public works contractor, subcontractor, or developer.
2. Performance of construction work . . . in execution of the project.
3. Transfer . . . of an asset of value for less than fair market price.

## Paid for in whole or in part out of public funds

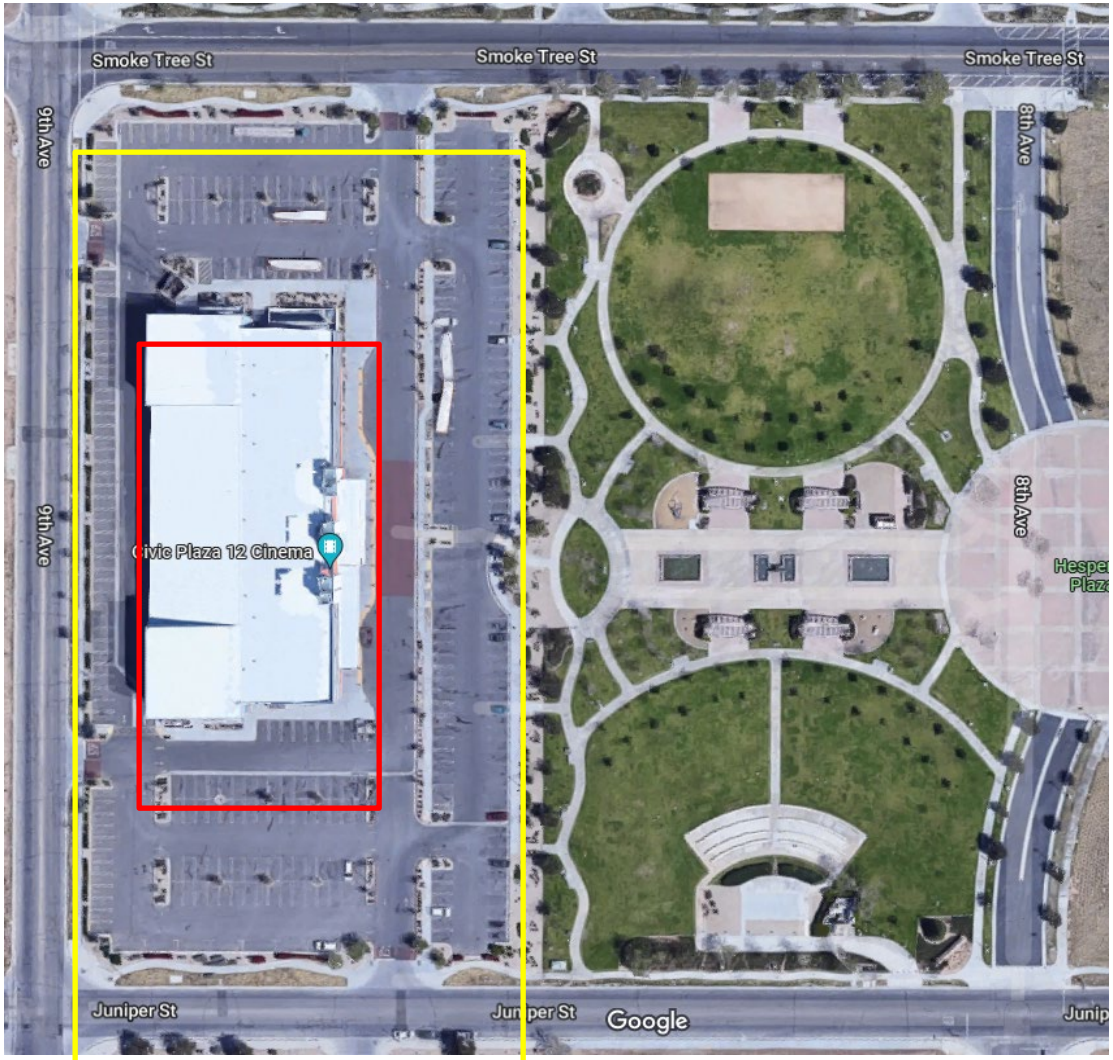
**(Labor Code 1720(b))**

4.Fees, costs, rents, insurance or bond premiums, loans, interest rates, or other obligations that would normally be required in the execution of the contract, that are paid, reduced, charged at less than fair market value, waived, or forgiven . . . .

5. Money loaned . . . that is to be repaid on a contingent basis.

6. Credits that are applied . . . against repayment obligations . . . .

# Case Study




Imagery ©2022 County of San Bernardino, Maxar Technologies, USDA/FPAC/GEO, Map data ©2022

Hesperia sold red section to developer for $101k

Hesperia built parking lot on yellow section

Hesperia gave $101k to developer after theater was built

Hesperia provided $1.8M in forgivable loans

Hesperia waived interest on loans in case of default

- For purposes of the prevailing wage law, public funds **do not** include:

- Proceeds from **Conduit Revenue Bonds**
  - Usually available to build schools, hospitals, and housing.
  - But see 1720.9 (general acute care hospitals) and 1720.8 (charter schools)
- **Low Income Housing Tax Credits**
  - Usually allocated by the California Tax Credit Allocation Committee (CTCAC).

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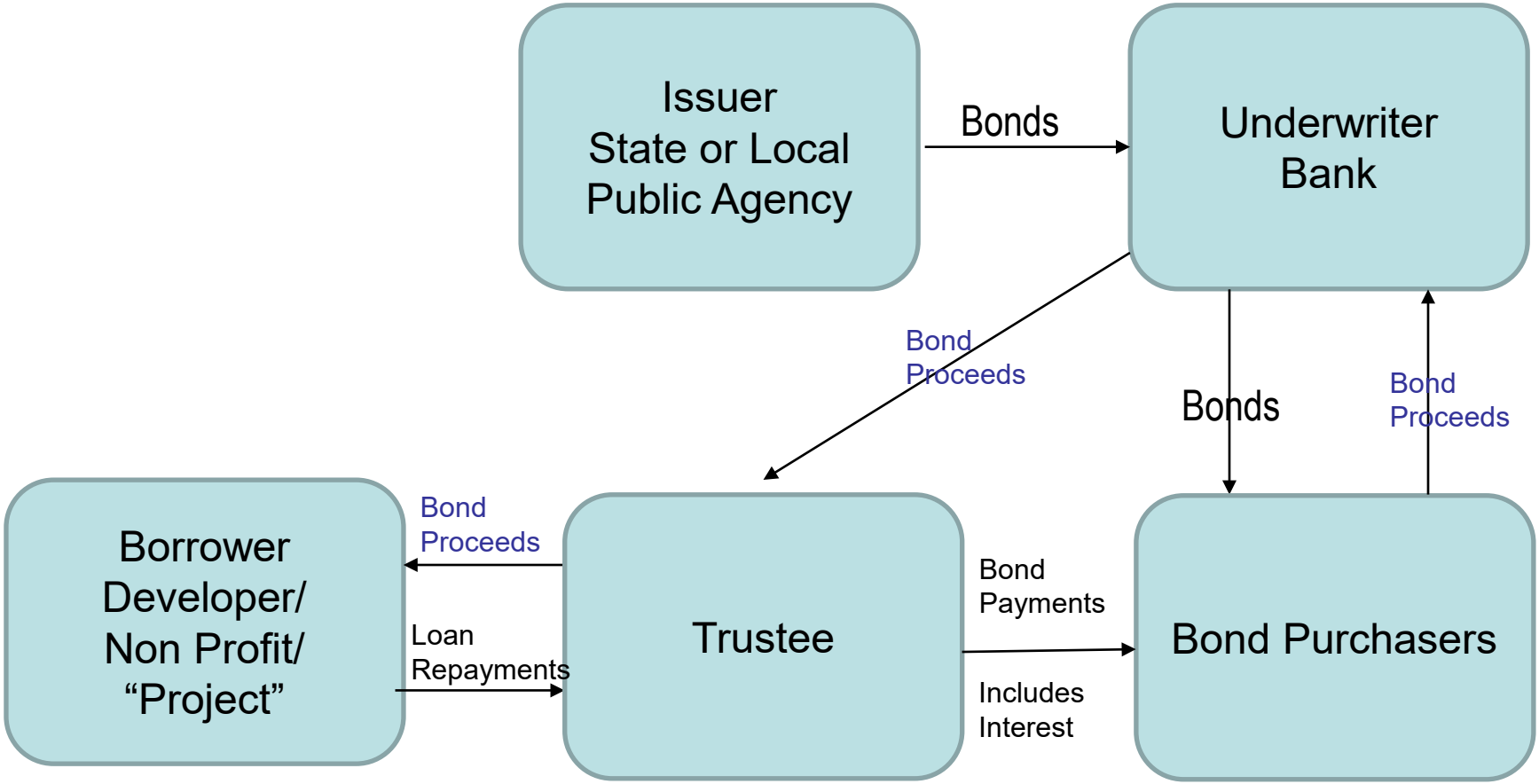
# Conduit Revenue Bonds



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# Other definitions of "public work"

- Section 1720(e) [Work on electric transmission system]
- Section 1720.2 [Private construction leased to public entity]
- Section 1720.3 [Off-haul of refuse]
- Section 1720.6 [Private renewable energy projects on public property]
- Section 1720.7 [Work done on general acute care hospitals]
- Section 1720.8 [Work done on charter schools] 1/1/2021
- Section 1720.9 [Hauling of ready-mixed concrete]

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# Tenant Improvements Paid for by Private Landlord

Private Office Building
with 100,000 total sq. ft.

City of
Sacramento
60,000 sq. ft.

Tenant improvements done by the private landlord before the City even signs a lease.

Tenant improvements are done according to the City's specs.

(Section 1720.2)

## Section 1720(c)(2) exception

1) the public improvement work is required as a condition of regulatory approval;

2) the project is an otherwise private development;

3) the public entity must not contribute more money, or the equivalent of money, to the overall project  than is required to construct the public improvement work; and

4) the public entity must not maintain any proprietary interest in the overall project.

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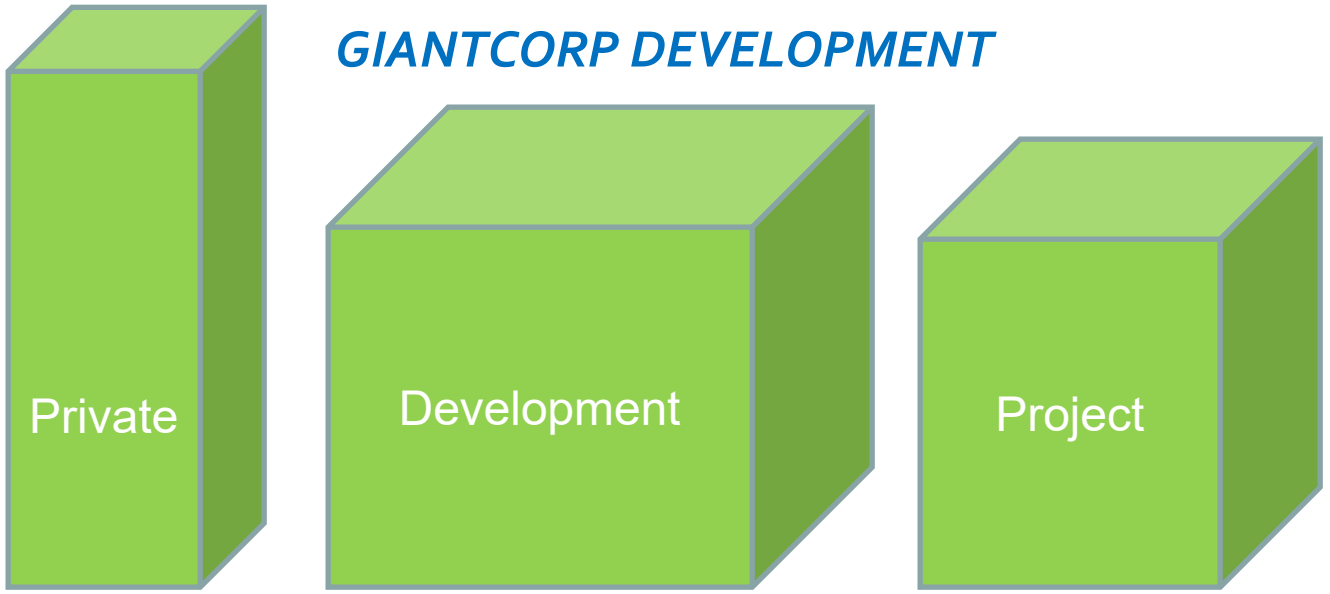
## GIANTCORP DEVELOPMENT




$200M Project – City requires Sidewalks and Traffic Signals as a Condition of Regulatory Approval
Cost of Sidewalk and Signals $10M, Public Subsidy, $8M

## Section 1720(c)(3)(A) exception

- So-called “de minimis exception” applies when a public entity provides a public subsidy to an otherwise private development project that is “de minimis” in the context of the project.

## Section 1720(c)(3)(B) exception

- De minimis if it is both less than $600,000 and less than 2 percent of the total project cost.
- For projects that consist entirely of single-family dwellings, de minimis is merely less than 2 percent of total project cost.
- Not applicable to projects advertised for bid/awarded before 7/1/21

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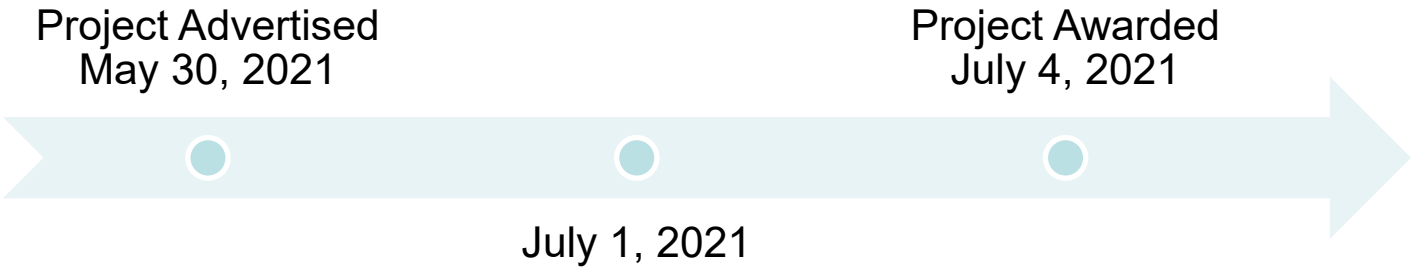
# 1720(c)(3) – Does the Exception Apply?

Mixed-use Project Costs $30 million

- ❑ The State provides a grant equal to 2% of the project cost. ($600,000)
- ❑ Project is advertised for bid on May 30, 2021
- ❑ Project is awarded on July 4, 2021.



## Section 1720(c)(5)(e) exception

### Affordable Housing Project (20-40-80)

1) At least 40% of the units
2) Made Available to Households Making No More than 80% of the Area Median Income
3) These restrictions are in place for at least 20 years **and**
4) Only form of public funds is a below market interest rate loan

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# 1720(c)(5)(E) – Does the Exception Apply?

Affordable Housing Project has 100 units.

- ❑ 20 units for families making no more than 80% of the AMI.
- ❑ 15 units for families making no more than 60% of the AMI.
- ❑ 5 units for families making no more than 50% of the AMI.
- ❑ 60 market-rate units.
- ❑ Affordability restrictions are in place for 55 years.

Project receives LIHTCs, proceeds from conduit revenue bonds, commercial bank loans, and a 65-year loan from County for 1% interest. The public agencies are silent on PW requirements.

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# Miscellaneous Exceptions

- Section 1720.4 (Volunteers or Conservation Corps) (Sunsets 1/1/24)
- Section 1720.5 (Graffiti Removal Work in the City of Los Angeles Done by a Community-Based Organization Under Certain Circumstances) (Sunsets 1/1/24)
- 8 CCR 16000 (Janitorial, Custodial, Security Guards)

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# COVERAGE DETERMINATIONS

- The coverage determination process is spelled out in Labor Code section 1773.5 and Cal. Code Regs., title 8, sections 16001-16002.5.

- Two types of coverage determinations
  - Whether a project is covered
  - Whether a type of work is covered.

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# What is a coverage determination?

**Section 1773.5 and Cal. Code Regs., Title 8, Sections 16001-16002.5**

- The Director has the power to determine that a project or a type of work is public work through issuing what is known as a coverage determination.

- The administrative process consists of an initial coverage determination and a final determination on administrative appeal.

- Depending on when the parties make their submissions, the entire process can take many months.

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# New Law 2022

AB 1023: Payroll records requirements: “Monthly” means every 30-days; electronic records requirements; and specifies penalties for violations. (1771.4)

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# Select Bills

AB 1851: Hauling of materials for grading/paving/fill

AB 1886: Street sweeping

AB 1717: Fuel reduction

AB 2463: Volunteer/CCC exception (extend)

SB 954: eCPRs (Taft Hartley and LMCCs)

AB 2011: Affordable Housing and High Road Jobs Act of 2022

SB 1412: Prequal for STW/lawsuit to compel AB compliance

AB 1727: Small business contractor registration

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# Recent Decisions

- *Kaanaana v. Barrett Business Services* (March 29, 2021)
- *Busker v. Wabtec Corp., et al.* (August 16, 2021)
- *Mendoza v. Fonseca* (August 16, 2021)

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STATE OF CALIFORNIA

## Office of the Director – Legal Unit
## Public Works Inquiries

PWCoverage@dir.ca.gov

# Useful Links

- DIR's Public Works Home Page
  - http://www.dir.ca.gov/Public-Works/PublicWorks.html
- The Director's Public Works Coverage Determinations
  - http://www.dir.ca.gov/OPRL/PubWorkDecision.htm
- The Director's General Prevailing Wage Determinations
  - http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm
- DLSE's Public Works Manual
  - http://www.dir.ca.gov/dlse/PWManualCombined.pdf
- California Labor Code
  - http://leginfo.legislature.ca.gov/faces/codes.xhtml
- California Code of Regulations
  - http://www.oal.ca.gov/

# 2022
# PREVAILING WAGE
# LABOR COMPLIANCE WEBINAR

LABOR COMMISSIONER'S OFFICE
CALIFORNIA DEPARTMENT OF INDUSTRIAL RELATIONS

KNOW YOUR DUTIES AND RESPONSIBILITIES
UNDER THE LAW

# DISCLAIMER

## California Department of Industrial Relations

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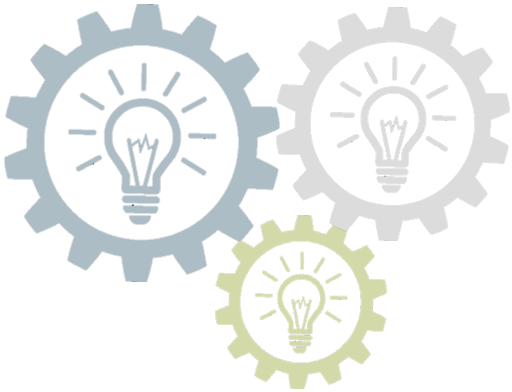
# Our Goals



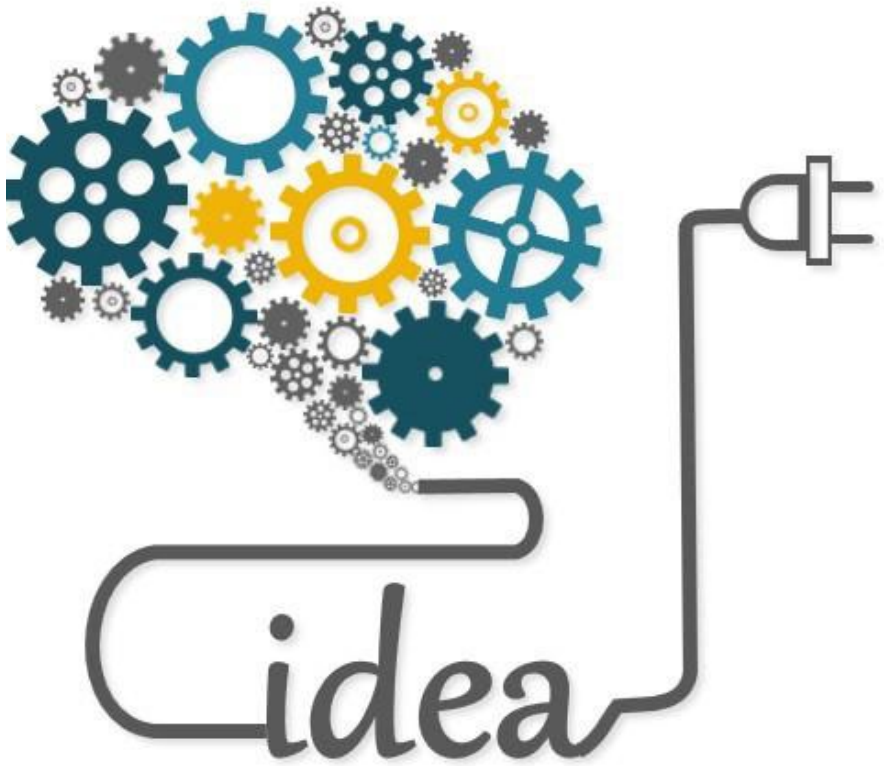
- PRE-QUALIFICATION OF CONTRACTORS
- LABOR COMMISSIONER MODEL QUESTIONNAIRE

# POLL QUESTION

As an Awarding Body, do you currently have a Pre-Qualification of Contractors system in place?

a) Yes

b) No



*"Individual commitment to a group effort -- that is what makes a team work, a company work, a society work, a civilization work."*
*– Vince Lombardi*

# Why Pre-Qualify Contractors ?

## Purpose

- Contractors seeking to BID on Public Works Projects can be Pre-Qualified (PCC 20101)
- Stops Bad Actors BEFORE a contract is awarded and stops repeat violators from continuing to profit from wage theft

## Importance

**Levels the Playing Field for Law Abiding Contractors**

## Value

- Allows Awarding Bodies to be Proactive
- Contracts are awarded only to Responsible Bidders
- Avoids Awarding Body Citations and Debarment

# POLL QUESTION

What is a benefit of using the Labor Commissioner's Model Questionnaire ?

a) It is a complete pre-qualification packet that meets all the requirements of the law

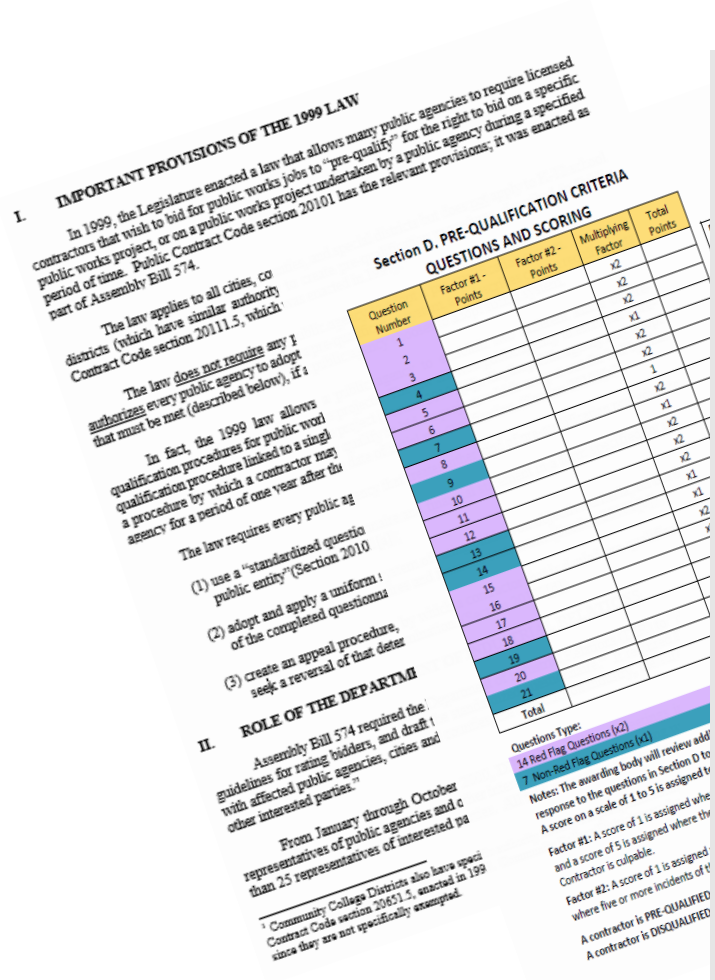
b) It can be easily adopted and customized to an awarding bodies needs

c) It can be used to enhance whatever pre-qualification system an awarding body already has in place

d) All of the above

# Labor Commissioner's **Model Questionnaire**

## EASY AS 1-2-3



I. IMPORTANT PROVISIONS OF THE 1999 LAW

In 1999, the Legislature enacted a law that allows many public agencies to require licensed contractors that wish to bid for public works jobs to "pre-qualify" for the right to bid on a specific public works project, or on a public works project undertaken by a public agency during a specified period of time. Public Contract Code section 20101 has the relevant provisions; it was enacted as part of Assembly Bill 574.

The law applies to all cities, co districts (which have similar authority Contract Code section 20111.5, which[1]

The law does not require any I authorizes every public agency to adopt that must be met (described below), if a

In fact, the 1999 law allows qualification procedures for public worl qualification procedure linked to a singl a procedure by which a contractor may agency for a period of one year after thi

The law requires every public ag

(1) use a "standardized questio public entity" (Section 2010

(2) adopt and apply a uniform s of the completed questionnai

(3) create an appeal procedure, seek a reversal of that deter

II. ROLE OF THE DEPARTMI

Assembly Bill 574 required the guidelines for rating bidders, and draft with affected public agencies, cities and other interested parties."

From January through October representatives of public agencies and c than 25 representatives of interested pa

[1] Community College Districts also have speci Contract Code section 20651.5, enacted in 199 since they are not specifically exempted.

Section D. PRE-QUALIFICATION CRITERIA QUESTIONS AND SCORING

| Question Number | Factor #1 - Points | Factor #2 - Points | Multiplying Factor | Total Points |
|---|---|---|---|---|
| 1 | | | x2 | |
| 2 | | | x2 | |
| 3 | | | x2 | |
| 4 | | | x1 | |
| 5 | | | x2 | |
| 6 | | | x2 | |
| 7 | | | 1 | |
| 8 | | | x2 | |
| 9 | | | x1 | |
| 10 | | | x2 | |
| 11 | | | x2 | |
| 12 | | | x2 | |
| 13 | | | x1 | |
| 14 | | | x1 | |
| 15 | | | x2 | |
| 16 | | | x | |
| 17 | | | | |
| 18 | | | | |
| 19 | | | | |
| 20 | | | | |
| 21 | | | | |
| Total | | | | |

Questions Type:
14 Red Flag Questions (x2)
7 Non-Red Flag Questions (x1)

Notes: The awarding body will review addi response to the questions in Section D to A score on a scale of 1 to 5 is assigned to

Factor #1: A score of 1 is assigned whe and a score of 5 is assigned where the Contractor is culpable.

Factor #2: A score of 1 is assigned where five or more incidents of t

A contractor is PRE-QUALIFIED
A contractor is DISQUALIFIED

INSTRUCTIONS FOR AWARDING BODIES

Contractors who wish to be pre-qualified must submit a completed pre-qualification questionnaire to the awarding body for review. Contractors are required to provide any additional information and/or

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CONTRACTOR PRE-QUALIFICATION QUESTIONNAIRE

A. CONTRACTOR INFORMATION

(All Questions Must Be Answered)

Firm Name (as it appears on CSLB license):

Firm Type (Select one): ☐ Corporation ☐ LLC ☐ Partnership ☐ Sole Proprietorship ☐ Joint Venture

SOURCES FOR VERIFICATION OF INFORMATION GIVEN BY CONTRACTORS

TIONARY NOTE: The information that will be given to public agencies by rs seeking pre-qualification is provided under oath, with the understanding that nal providing of false information is, in itself, grounds for disqualification, sult in disqualification from bidding on any public works project, registering Works Contractor with the Department of Industrial Relations, and may be rmination of a public works contract. We expect that the information given will be accepted at face value in most instances. Our list of sources of ilable to the public is provided for use where a public agency reviewing in a questionnaire has specific reason to believe that one or more verified in this manner.

mation on contractor's DIR - Public Works Contractor Registration

ractor's DIR Public Works Contractor Registration can be found may be used to verify a contractor's current status using the 10- ber: https://efiling.dir.ca.gov/PWCR/Search.

on about a contractor's license(s)

ed contractors, information about the type of license(s) nses were issued (and certain other information), are te Licensing Board (CSLB), 9821 Business Park Drive, number 800-321-2752. The CSLB web site for public

ers' compensation insurance

carrier issues to each of its insured businesses a ould be willing to provide a copy upon request. ate for the year should be stated in a letter to compensation insurance carrier.

r workers' compensation, with the consent Relations. The names of companies that rment's Office of Self-Insurance Plans, e 230, Rancho Cordova, CA 95670; web site for public information is:

compensation insurance carriers eporting Bureau (WCIRB), 1221

nse numbers, classifications and expiration

on:

| Expiration Date: |
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Registration Number(s):

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f a corporation, limited liability company; or lividual(s) listed on the CSLB records who for each license.

dividual

| Expiration Date: |
|---|
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# LABOR COMMISSIONER'S **MODEL QUESTIONNAIRE**

**Contractor**

Completes the Pre-Qualification questionnaire

Submits the Pre-Qualification Questionnaire and financial statements

Provides any additional information/documentation

**SUBMIT**
**STEP 1**

**Awarding Body Reviews Section C "Essential Criteria"**

Contractor is immediately DISQUALIFIED If:

Any answer to questions 1 through 6 is "NO"

Any answer to questions 7 through 13 is "YES"

**REVIEW**
**STEP 2**

**Awarding Body Reviews Section D "Prequalification Criteria Questions"**

Contractor is PRE-QUALIFIED if:
All of the Contractor's responses to questions 1 through 21 are "0"

**PRE-QUALIFY**
**STEP 3**

# POLL QUESTION

Can a contractor that is not registered with DIR as a public works contractor for the current fiscal year be pre-qualified?

a) Yes

b) No

## C. ESSENTIAL CRITERIA QUESTIONS

| | | Circle Answer | |
|---|---|---|---|
| 1. | Does your firm possess a valid and current California Contractor's or other professional license as required by law for the project or projects for which it intends to submit a bid? | Yes | No |
| 2. | Is your firm registered with DIR as a Public Works Contractor for the current fiscal year? | Yes | No |
| 3. | Does your firm have a liability insurance policy with a policy limit of at least $1,000,000 per occurrence and $2,000,000 aggregate? | Yes | No |
| 4. | Does your firm have current workers' compensation insurance policy as required by the Labor Code or is your firm legally self-insured pursuant to Labor Code section 3700 et. seq.? | Yes | No |
| 5. | Have you attached your firm's latest copy of reviewed or audited financial statements with accompanying notes and supplemental information? * | Yes | No |
| | **NOTE: Financial statements that are not either reviewed or audited are not acceptable. A letter verifying availability of a line of credit may also be attached; however, it will be considered as supplemental information only, and is not a substitute for the required financial statements.** | | |
| 6. | Have you attached a notarized statement from an admitted surety insurer (approved by the California Department of Insurance) authorized to issue bonds in the State of California, which states that: (a) your current bonding capacity is sufficient for the project for which you seek pre-qualification if you are seeking pre-qualification for a single project; or valid for a year if you are seeking pre-qualification valid for a year; and (b) your current available bonding capacity? ** | Yes | No |
| | **NOTE: Notarized statement must be from the surety company, not an agent or broker.** | | |

## F. CERTIFICATION

Questionnaires submitted by corporations must be signed with the legal name of the corporation, followed by the name of the state of incorporation and by the signature and designation of the chairman of the board, president or any vice president, and then followed by a second signature by the secretary, assistant secretary, the chief financial officer or assistant treasurer. All persons signing must be authorized to bind the corporation in the matter. The name of each person signing shall also be typed or printed below the signature. Satisfactory evidence of the authority of each officer signing on behalf of a corporation shall be furnished.

Questionnaires submitted by partnerships must furnish the full name of all partners and must be signed in the partnership name by a general partner with authority to bind the partnership in such matters, followed by the signature and designation of the person signing. The name of the person signing shall also be typed or printed below the signature.

**Each person signing below makes the following representations under penalty of perjury:**

The submitter of the foregoing answers to the questionnaire has read the same and the matters stated therein are true to the best of his or her own personal knowledge. This information is provided for the purpose of qualifying to bid on the Project, and any individual, company or other agency named herein is hereby authorized to supply the awarding body with any information necessary to verify the prospective bidder's statements. By signing below, the submitter and the named contractor hereby grant permission to the [*Public Entity*] to contact any or all of the above listed persons or entities to confirm facts or otherwise investigate the above facts and issues.

The submitter understands that any statement which is proven to be false shall be grounds for immediate disqualification from bidding on the Project. The submitter whose signature appears below represents and warrants that he or she has authority to bind the named contractor.

I, _____ (Name), the undersigned, am the _____ (Title), with the authority to act for and on behalf of _____ (Contractor Entity Name), declare under penalty of perjury under the laws of the State of California that the foregoing information provided in this Pre-qualification Questionnaire is true, full, and correct.

I understand that making a false statement may result in disqualification from bidding on any public works project, registering as a Public Works Contractor with the Department of Industrial Relations, and may be grounds for termination of a public works contract.

Executed on this: _____ day of _____ at _____.
(Date) (Month / Year) (City / State)

Name of Contractor Representative: _____

Signature of Contractor Representative: _____

# Important Notes

***Be Proactive***

- Purpose of pre-qualifying is to make sure bad actors are stopped BEFORE a contract is awarded and repeat violators do not profit from wage theft

***Level the Playing Field for Law Abiding Contractors***

- Labor Commissioner Model Questionnaire is a complete pre-qualification packet that can be easily adopted and customized to an Awarding Bodies needs AND can be used to enhance whatever system an Awarding Body already has in place

***Avoid Awarding Body Citations and Debarment***

# WWW.DIR.CA.GOV

## Public Works

Public works in general means:

- Construction, alteration, demolition, installation, or repair work done under contract and paid in whole or in part out of public funds.
- It can include preconstruction and post-construction activities related to a public works project.
- For a full definition of public works refer to Labor Code section 1720.

Anyone working on a public works project must be paid prevailing wages as determined by DIR. Projects of $30,000 or more must meet DIR's apprenticeship requirements. Failure to comply with public works requirements can result in civil penalties, criminal prosecution, or both.

**Contractors,** and others who work on public works projects

**Awarding Bodies,** public agencies or project owners

### Resources

- Public Works Pre-Qualification of Contractors
- Apprenticeship Requirements
- Certified Payroll Reporting
- Enforcement of Public Works Law
- File a Public Works Complaint
- Labor Compliance Programs
- Prevailing Wage Requirements
- More Resources

## Have Questions?

### Contact Us:

Publicworks@dir.ca.gov

### Subject Line:

Pre-Qualification of Contractors

# Thank You

# PREVAILING WAGE/LABOR COMPLIANCE WEBINAR

## KNOW YOUR DUTIES AND RESPONSIBILITIES UNDER THE LAW

Public Works
California Labor Commissioner's Office
Department of Industrial Relations
July 21, 2022

# DISCLAIMER

## California Labor Commissioner's Office

The following presentation is intended to summarize relevant portions of existing law in the Labor Code and California Code of Regulations, but those code sections, as interpreted by the courts, will govern actual enforcement. The information contained in this presentation is a general overview of existing law or regulation. Any opinions expressed are solely those of the author/speaker and are not necessarily the official position of the Department of Industrial Relations (DIR), its Director, or any related public entity. The information in this presentation is not intended as legal advice, and does not guarantee any outcome in specific enforcement or coverage proceedings within the jurisdiction of DIR.

# COMPLIANCE REQUIREMENTS

**Labor Code & Title 8, CCR § 16000**

# PROJECT REGISTRATION

PROVIDE ELECTRONIC NOTICE TO DIR OF ALL PUBLIC WORKS CONTRACTS WITHIN 30 DAYS OF THE AWARD, BUT IN NO EVENT LATER THAN THE FIRST DAY IN WHICH A CONTRACTOR HAS WORKERS EMPLOYED UPON THE PUBLIC WORK. (LC §1773.3) *

*** Does not apply to projects of $25,000 or less when the project is for construction, alteration, demolition, installation, or repair work or for projects of $15,000 or less when the project is for maintenance work**

# POLL QUESTION #1

## PROJECT REGISTRATION

Which of the following projects does <u>not</u> need to be registered, according to DIR requirements?

- A contract of $30,000 for installation work
- A contract of $26,000 for demolition work
- A contract of $10,000 for maintenance work

# POLL QUESTION #1 - ANSWER

## PROJECT REGISTRATION

Which of the following projects does not need to be registered, according to DIR requirements?

- A contract of $30,000 for installation work
- A contract of $26,000 for demolition work
- A contract of $10,000 for maintenance work

Registration requirements do not apply to projects of $25,000 or less when the project is for construction, alteration, demolition, installation, or repair work or for projects of $15,000 or less when the project is for maintenance work

# https://www.dir.ca.gov/Public-Works/PublicWorks.html

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Anyone working on a public works project must be paid prevailing wages as determined by DIR. Projects of $30,000 or more must meet DIR's apprenticeship requirements. Failure to comply with public works requirements can result in civil penalties, criminal prosecution, or both.

**Contractors,** and others who work on public works projects

**Awarding Bodies,** public agencies or project owners

**Public Works Prevailing Wage Training for Contractors and Awarding Bodies**

### Resources

- Public Works Pre-Qualification of Contractors
- Apprenticeship Requirements
- Certified Payroll Reporting
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- Labor Compliance Programs
- Prevailing Wage Requirements
- More Resources

### Search

- Find Public Works Projects
- Find Public Works Contractors
- Find Payroll Records

### Registration

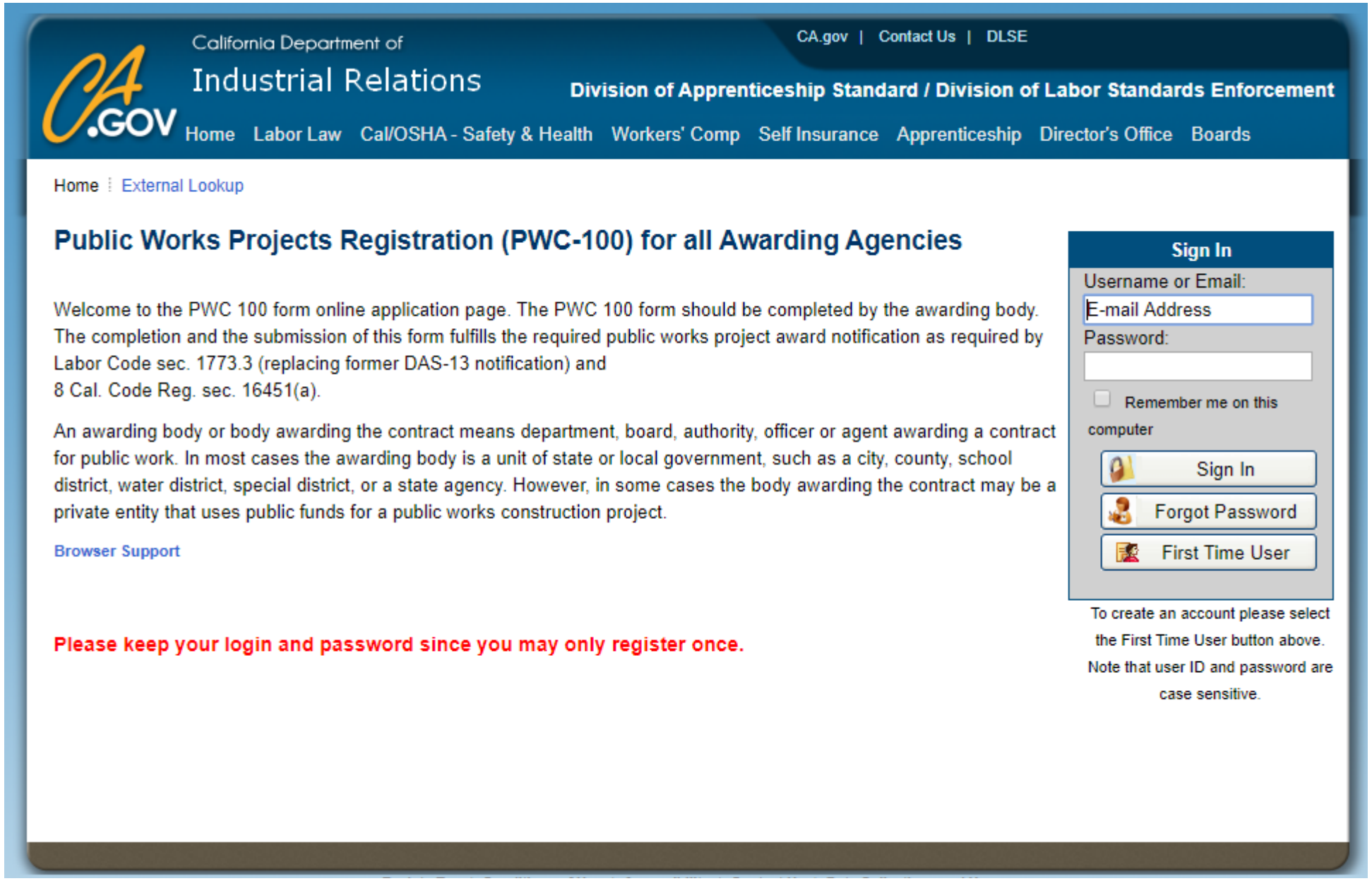
- Contractor Registration
- Project Registration

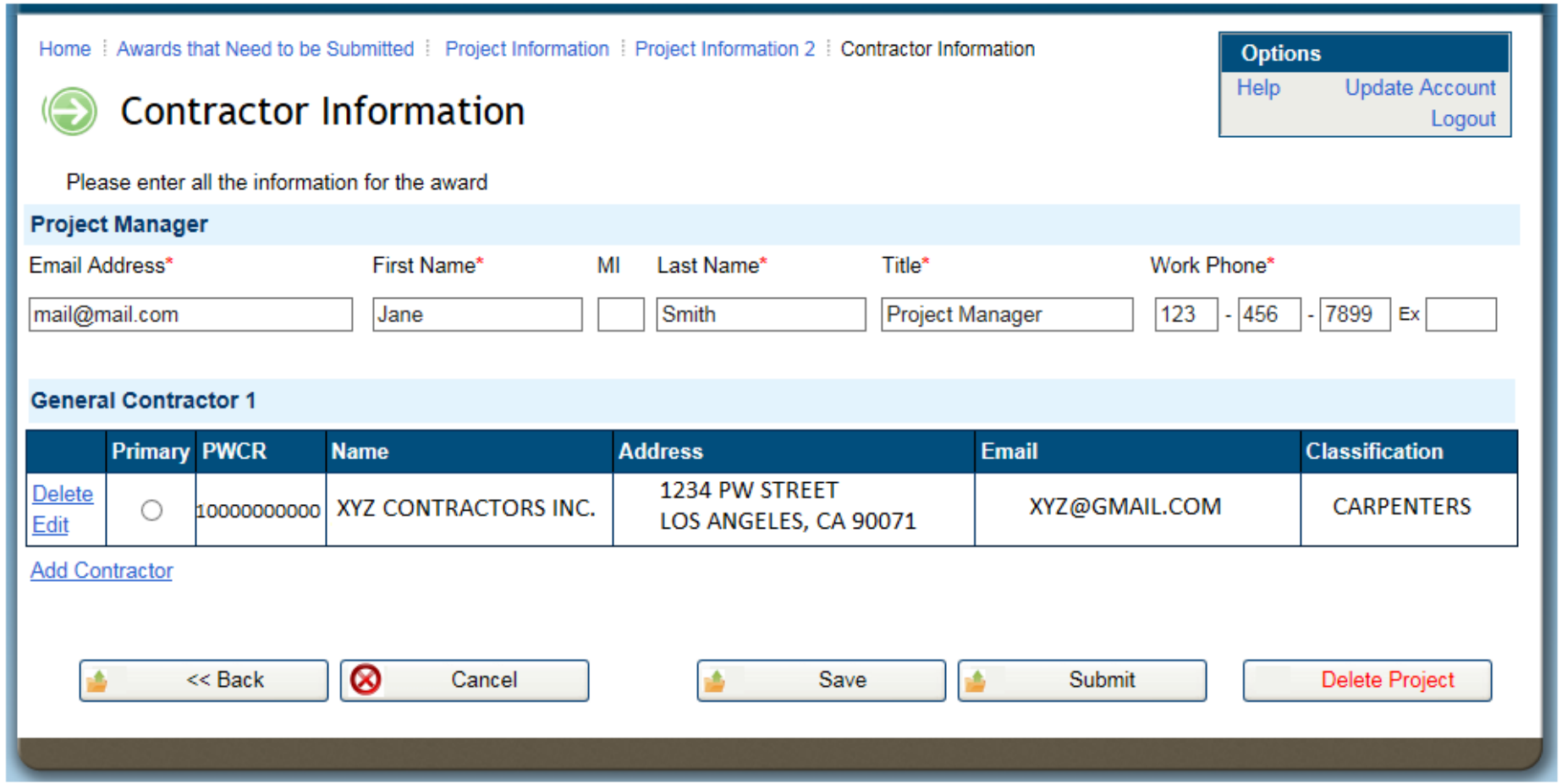
### What's New

en Español

- Public Works Contractors: Renew Registration by June 30

https://www.dir.ca.gov/pwc100ext/LoginPage.aspx




Home | Awards that Need to be Submitted | Project Information | Project Information 2 | Contractor Information
Options
Help
Update Account
Logout
Contractor Information
Please enter all the information for the award
Project Manager
Email Address*
First Name*
MI
Last Name*
Title*
Work Phone*
mail@mail.com
Jane
Smith
Project Manager
123 - 456 - 7899 Ex
General Contractor 1
Primary
PWCR
Name
Address
Email
Classification
Delete
Edit
10000000000
XYZ CONTRACTORS INC.
1234 PW STREET
LOS ANGELES, CA 90071
XYZ@GMAIL.COM
CARPENTERS
Add Contractor
<< Back
Cancel
Save
Submit
Delete Project

# SEARCHING FOR A PUBLIC WORKS PROJECT

## Public Works

Public works in general means:

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**Awarding Bodies,** public agencies or project owners

**Public Works Prevailing Wage Training for Contractors and Awarding Bodies**

What's New

en Español

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### Resources

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- More Resources

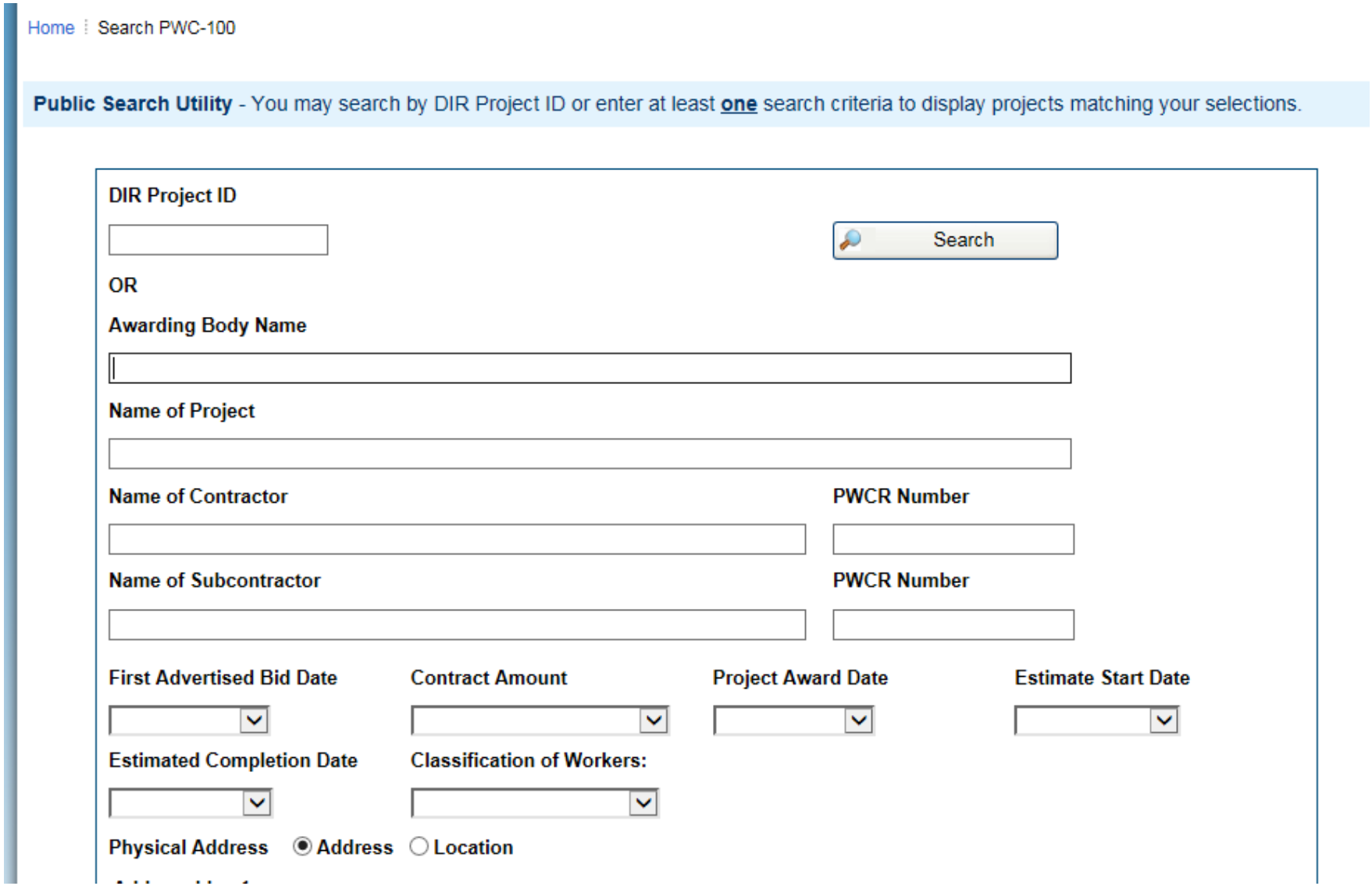
### Search

- Find Public Works Projects
- Find Public Works Contractors
- Find Payroll Records

### Registration

- Contractor Registration
- Project Registration

# https://www.dir.ca.gov/pwc100ext/ExternalLookup.aspx



## SEARCH RESULTS - 16 records found

Click the DIR Project ID to see more information about the project.

| ID | Awarding Body | Project Name | Site Address | Dates | Classification | County |
|---|---|---|---|---|---|---|
| **Project Number:** Bid 7582 **DIR Project ID:** 123456 | Sunshine County | Sunshine H.S. Gym Repair **Amount:** $524,409.59 | 1213 Sunny Lane Sunshine, Ca 93312 | **Advertised:** 03/14/2019 **Award:** 04/04/2019 **Est. Start:** 07/01/2019 **Est. Comp:** 08/30/2019 | LABORERS CEMENT MASONS OPERATING ENGINEERS | RIVERSIDE |

| Contractor | | Sub Contractor | |
|---|---|---|---|
| **PWCR/CSLB/Lic** | **Name** | **PWCR/CSLB/Lic** | **Name** |

| ID | Awarding Body | Project Name | Site Address | Dates | Classification | County |
|---|---|---|---|---|---|---|
| **Project Number:** Puchase Req Y195478 **DIR Project ID:** 789101 | Sunshine County | Sunshine Park Community Pool **Amount:** $3,459,687.33 | 1031 Main St. Sunshine, Ca 93312 | **Advertised:** 01/07/2019 **Award:** 02/14/2019 **Est. Start:** 04/01/2019 **Est. Comp:** 11/22/2019 | LABORERS CEMENT MASONS OPERATING ENGINEERS | RIVERSIDE |

| Contractor | | Sub Contractor | |
|---|---|---|---|
| **PWCR/CSLB/Lic** | **Name** | **PWCR/CSLB/Lic** | **Name** |
| 10000000000 | XYZ CONTRACTORS, INC. | | |

# ENSURE THAT PUBLIC WORKS PROJECTS ARE NOT SPLIT OR SEPARATED INTO SMALLER WORK ORDERS OR PROJECTS FOR THE PURPOSE OF EVADING THE APPLICABLE PROVISIONS OF LC §1771. (TITLE 8, CCR § 16100)

# ENSURE CONTRACTORS ARE REGISTERED

A CONTRACTOR OR SUBCONTRACTOR MUST BE REGISTERED WHEN BIDDING, LISTED IN A BID PROPOSAL, OR ENGAGED IN THE PERFORMANCE OF ANY CONTRACT FOR PUBLIC WORK. (LC §§1725.5 &1771.1) *

*** Does not apply to projects of $25,000 or less when the project is for construction, alteration, demolition, installation, or repair work or for projects of $15,000 or less when the project is for maintenance work**

https://cadir.secure.force.com/ContractorSearch

# Public Works Contractor Registration Search

Enter at least one criteria to display registered public works contractor(s) matching your selections.

Note: Search results will display all of the public works contractor registrations, both current and expired. Make sure a proper registration fiscal year is selected when performing a search.

**Input Label**

Legal name, CSLB number, DBA, Registration number

**From Date:**

mm / dd / yyyy

**To Date:**

mm / dd / yyyy

**County**

**City**

Search | Reset

Crafts (Select all that apply)

- [ ] Asbestos
- [ ] Boilermaker-Blacksmith

Registrations

**Search Results:**

Previous | Next

Print PDF | Export

Add all to my list | My List (0)

## Contractor Information

**Legal Entity Name**
A+ Construction
**Legal Entity Type**
Corporation
**Status**
Active
**Registration Number**
PW-LR-1000469801
**Registration effective date**
03/04/19
**Registration expiration date**
06/30/19
**Mailing Address**
1 Address St  Anytown 95555 CA United States of America
**Physical Address**
1 Address St  Anytown 95555 CA United States of America
**Email Address**

**Trade Name/DBA**
Mike's Construction
**License Number (s)**
CSLB:1234567
CSLB:1234567
CSLB:1234567

## Registration History

| Effective Date | Expiration Date |
|---|---|
| 03/04/19 | 06/30/19 |

## Legal Entity Information

**Corporation Number:**
**Federal Employment Identification Number:**
**President Name:** M. J. Poppins
**Vice President Name:**
**Treasurer Name:**
**Secretary Name:**
**CEO Name:**
**Agent of Service Name:**
**Agent of Service Mailing Address:** CA United States of America

## Worker's Compensation

**Do you lease employees through Professional Employer Organization (PEO)?:** No
**Please provide your current worker's compensation insurance information below:**

| | PEO | PEO | PEO |
|---|---|---|---|
| PEO Information | Name | Phone | Email |

Insured by Carrier
**Policy Holder Name:** M. J. Poppins
**Insurance Carrier:** Aetna
**Policy Number:** 8790000
**Inception date:** 01/01/19
**Expiration Date:** 01/01/20

# POLL QUESTION #2

## CONTRACTOR REGISTRATION

As an awarding body member, you know that contractors must be registered when bidding, being awarded, and working on public works projects.

Using the contractor registration histories and provided dates on the next slide, which contractor was correctly registered through the entire process?

# POLL QUESTION #2

| Registration History – Contractor A | |
|---|---|
| **Effective Date** | **Expiration Date** |
| 8/10/2021 | 6/30/2022 |
| 7/1/2020 | 6/30/2021 |
| 1/1/2020 | 6/30/2020 |

| Registration History – Contractor B | |
|---|---|
| **Effective Date** | **Expiration Date** |
| 7/1/2021 | 6/30/2022 |
| 9/1/2020 | 6/30/2021 |
| 10/15/2019 | 6/30/2020 |

| Registration History – Contractor C | |
|---|---|
| **Effective Date** | **Expiration Date** |
| 7/15/2021 | 6/30/2022 |
| 6/25/2021 | 6/30/2021 |
| 6/1/2020 | 6/30/2020 |

**Bid Date: 6/20/2021**

**Award Date: 7/10/2021**

**Project Dates: 8/1/2021-4/30/2022**

# POLL QUESTION #2 - ANSWER

| Registration History – Contractor A | |
|---|---|
| **Effective Date** | **Expiration Date** |
| 8/10/2021 | 6/30/2022 |
| 7/1/2020 | 6/30/2021 |
| 1/1/2020 | 6/30/2020 |

| Registration History – Contractor B | |
|---|---|
| **Effective Date** | **Expiration Date** |
| 7/1/2021 | 6/30/2022 |
| 9/1/2020 | 6/30/2021 |
| 10/15/2019 | 6/30/2020 |

| Registration History – Contractor C | |
|---|---|
| **Effective Date** | **Expiration Date** |
| 7/15/202 | 2022 |
| 6/25/ | 21 |
| 6/1/20 | 6/3 020 |

Bid Date: 6/20/2021

Award Date: 7/10/2021

Project Dates: 8/1/2021-4/30/2022

# POLL QUESTION #2 - ANSWER

| Registration History – Contractor A | |
|---|---|
| Effecti | Date |
| 8/10/202 | 2022 |
| 7/1/2 | 21 |
| 1/1/20 | 6/3 020 |

| Registration History – Contractor B | |
|---|---|
| Effective Date | Expiration Date |
| 7/1/2021 | 6/30/2022 |
| 9/1/2020 | 6/30/2021 |
| 10/15/2019 | 6/30/2020 |

| Registration History – Contractor C | |
|---|---|
| Effecti | Date |
| 7/15/202 | 2022 |
| 6/25/ | 21 |
| 6/1/20 | 6/3 020 |

Bid Date: 6/20/2021

Award Date: 7/10/2021

Project Dates: 8/1/2021-4/30/2022

# POLL QUESTION #2 - ANSWER

| Registration History – Contractor A | |
|---|---|
| Effecti | Date |
| 8/10/202 | 2022 |
| 7/1/2 | 21 |
| 1/1/20 | 6/3 020 |

| Registration History – Contractor B | |
|---|---|
| Effective Date | Expiration Date |
| 7/1/2021 | 6/30/2022 |
| 9/1/2020 | 6/30/2021 |
| 10/15/2019 | 6/30/2020 |

| Registration History – Contractor C | |
|---|---|
| Effecti | Date |
| 7/15/202 | 2022 |
| 6/25/ | 21 |
| 6/1/20 | 6/3 020 |

Bid Date: 6/20/2021

Award Date: 7/10/2021

Project Dates: 8/1/2021-4/30/2022

# NOTICE REQUIREMENTS

INCLUDE THE NOTICE OF THE REQUIREMENT DESCRIBED IN LC §1771.1(A) & LC §1771.4(A)(1) IN ALL BID INVITATIONS AND PUBLIC WORKS CONTRACTS.

- A bid shall not be accepted nor any contractor or subcontract entered into without proof of the contractor or subcontractor's current registration to perform public work. (LC §1771.1(b))

- The call for bids and contract documents shall specify that the project is subject to compliance monitoring and enforcement by the Department of Industrial Relations. (LC §1771.4(a)(1))

# OBTAIN PREVAILING WAGE RATES FROM DIR (LABOR CODE SECTIONS 1773, 1773.2, AND 1773.4)

# POST OR REQUIRE CONTRACTORS TO POST JOBSITE NOTICES ON PUBLIC WORKS REQUIREMENTS (LC §1771.4(A)(2))

# ENSURE THAT PUBLIC WORKS CONTRACTORS PAY PREVAILING WAGES AND ARE IN COMPLIANCE WITH PUBLIC WORKS LAWS AND REPORT ANY SUSPECTED VIOLATIONS TO THE LABOR COMMISSIONER (LC §1726; TITLE 8, CCR §16100)

*Except for public works projects of one thousand dollars ($1,000) or less. (LC §1771)

# WITHHOLD AND RETAIN ALL AMOUNTS REQUIRED TO SATISFY THE CIVIL WAGE AND PENALTY ASSESSMENT (LC §1727(A))

# ENFORCEMENT

**Labor Code §1773.3, §1771.1(j)**

# LABOR CODE §1773.3

PENALTIES SHALL BE ASSESSED AGAINST AWARDING BODIES FOR THE FOLLOWING (LC § 1773.3(C)(1)):

- Failing to timely submit project registration information;
- Entering into a contract with an unregistered contractor; or
- Allowing an unregistered contractor to engage in the performance of any public work

**Civil Penalty**

**Subject to penalties of $100 for each day in violation of either requirement, not to exceed an aggregate penalty of $10,000 per project**

# LABOR CODE §1773.3

PENALTIES SHALL ALSO BE ASSESSED AGAINST AN AWARDING BODY WHEN (LC §1773.3(D)) FINAL PAYMENT WAS MADE AND IT IS LATER DISCOVERED THAT AN UNREGISTERED CONTRACTOR WORKED ON THE PROJECT

**Civil Penalty**

**Subject to penalties of $100 for each full calendar day of noncompliance, for a period of up to 100 days, for each unregistered contractor or subcontractor.**

# POLL QUESTION #3

## PENALTY CALCULATION

The Labor Commissioner's Office investigates a project and determines that there were two subcontractors, Contractor A and Contractor B, who performed work for ten days each without being registered.

According to Labor Code 1773.3, how much in penalties can be assessed against the awarding body?

# POLL QUESTION #3 - ANSWER

## PENALTY CALCULATION

2 unregistered subcontractors x 10 days x $100 = $2000

**LC 1773.3: Subject to penalties of $100 for each full calendar day of noncompliance, for a period of up to 100 days, for each unregistered contractor or subcontractor.**

# AWARDING BODY "DEBARMENT" (LC §1773.3(F)):

"WHENEVER THE LABOR COMMISSIONER DETERMINES THAT AN AWARDING AGENCY HAS WILLFULLY VIOLATED THE REQUIREMENTS OF THIS SECTION OR CHAPTER WITH RESPECT TO TWO OR MORE PUBLIC WORKS CONTRACTS OR PROJECTS IN ANY 12-MONTH PERIOD, THE AWARDING AGENCY SHALL BE INELIGIBLE TO RECEIVE STATE FUNDING OR FINANCIAL ASSISTANCE FOR ANY CONSTRUCTION PROJECT UNDERTAKEN BY OR ON BEHALF OF THE AWARDING AGENCY FOR ONE YEAR..."

# LABOR COMMISSIONER SHALL ISSUE STOP ORDER WHEN UNREGISTERED CONTRACTOR PERFORMS WORK (LC §1771.1(J))

- Stop order prohibits use of unregistered contractor or subcontractor until registered
- Affected workers of unregistered contractor entitled to regular hourly pay of prevailing wage rate (not to exceed 10 days) for work stoppage
- Does not apply to other registered contractors or subcontractors on same public works project

**Contractor's failure to observe stop order is a misdemeanor. (LC §1771.1(k).)**

# PRECAUTIONARY LEGAL NOTICE TO AWARDING BODIES

THE LABOR COMMISSIONER WANTS TO REMIND ALL AWARDING BODIES THAT ARTICLE 2 ALSO INCLUDES LC §1777, WHICH WAS ENACTED IN 1937 AND REMAINS THE LAW TODAY. SECTION 1777 ESTABLISHES A CRIMINAL PENALTY (MISDEMEANOR) AGAINST "ANY OFFICER, AGENT, OR REPRESENTATIVE OF THE STATE OR OF ANY POLITICAL SUBDIVISION WHO WILLFULLY VIOLATES ANY PROVISION" OF ARTICLE 2.

# THANK YOU

Public Works
California Labor Commissioner's Office
Department of Industrial Relations

# SKILLED AND TRAINED WORKFORCE REQUIREMENTS

Public Works
California Labor Commissioner's Office
Department of Industrial Relations
July 21st, 2022

# DISCLAIMER

## California Labor Commissioner's Office

The following presentation is intended to summarize relevant portions of existing law in the Labor Code and California Code of Regulations, but those code sections, as interpreted by the courts, will govern actual enforcement. The information contained in this presentation is a general overview of existing law or regulation. Any opinions expressed are solely those of the author/speaker and are not necessarily the official position of the Department of Industrial Relations (DIR), its Director, or any related public entity. The information in this presentation is not intended as legal advice, and does not guarantee any outcome in specific enforcement or coverage proceedings within the jurisdiction of DIR.

# Additional Disclaimers

## California Labor Commissioner's Office

- Presentation WILL NOT cover statutes and regulations that require use of Skilled and Trained Workforce.
  - Public Contract code 2600 does not require STW, but it provides the definition, compliance guidelines and enforcement measures.
  - Awarding Bodies/Public Entities should be aware which government code is applicable to agency.
- Apprenticeship requirements & STW requirements are separate requirements.
- Please bid on STW requirement projects only if confident compliance will be met.

# Skilled and Trained Workforce Requirement

Public Contract Code §2600

# SKILLED AND TRAINED WORKFORCE REQUIREMENTS

Public Contract Code §2600(a) & §2600(b)

- Chapter applies when a public entity is required by statute or regulation to obtain an enforceable commitment that a bidder, contractor, or other entity will use a skilled and trained workforce to complete a contract or project.
  - Awarding Bodies and public entities should be aware of which statutes and regulations apply to their agency. (EDC, HSC, PCC, PUC or any other government codes)

- A public entity may require a bidder or contractor to use a skilled and trained workforce to complete a contract or project regardless of whether the public entity is required to do so by a statute or regulation.

# Bidding Requirements & Enforceable Agreements

Public Contract Codes §2600, §2600.5 & §2602

# BID REQUIREMENTS

Public Contract Code §2600(c) & §2600.5

- When a skilled and trained workforce is required by statute or regulation or by requirement of a public entity, the public entity **shall include in all bid documents and construction contracts** a notice that the project is subject to the skilled and trained workforce requirement.
- The failure of a public entity to provide a notice pursuant to subdivision (c) of Section 2600 shall not excuse either of the following:
  - The public entity from the **requirement to obtain an enforceable commitment** that a contractor will use a skilled and trained workforce to complete a contract or project.
  - A contractor from the obligation to use a skilled or trained workforce if such a requirement is imposed by a statute or regulation.

# ENFORCEABLE AGREEMENTS

Public Contract Code §2602

Whenever a contractor is subject to the STW requirements, the commitment shall be made in an **enforceable agreement** with the public entity or other awarding body that provides **BOTH** of the following:

- Contractor and subcontractors at **every tier will comply** with the STW requirements.

- Contractor and subcontractors will **provide a report demonstrating compliance with the STW requirements** to the public entity or awarding body on a monthly basis while the project or contract is being performed.
  - Subcontractors should supply monthly reports to prime contractor and prime contractor will supply awarding body or public entity with report for all contractors.

# What is a Skilled and Trained Workforce? ("STW")

Public Contract Code §2601

# WHAT IS A "SKILLED AND TRAINED WORKFORCE"?

Public Contract Code §2601

A STW meets **ALL** of the following conditions:

- **ALL workers** performing work in an apprenticeable occupation in the building and construction trades are **EITHER**:
  - Skilled Journeypersons OR
  - DAS-Registered Apprentices

- **Graduation Percentage Requirement:**
  - 30% - 60% of **ALL** Skilled Journeypersons must be **graduates of apprenticeship program**.
    - Graduation percentage requirement varies depending on specific craft.
    - Graduation percentage requirement can be met by counting **EITHER**:
      - Number of Skilled Journeypersons employed (head count) OR
      - Number of hours worked by Skilled Journeypersons (hours worked by trade)

# WHO IS A "SKILLED JOURNEYPERSON"?

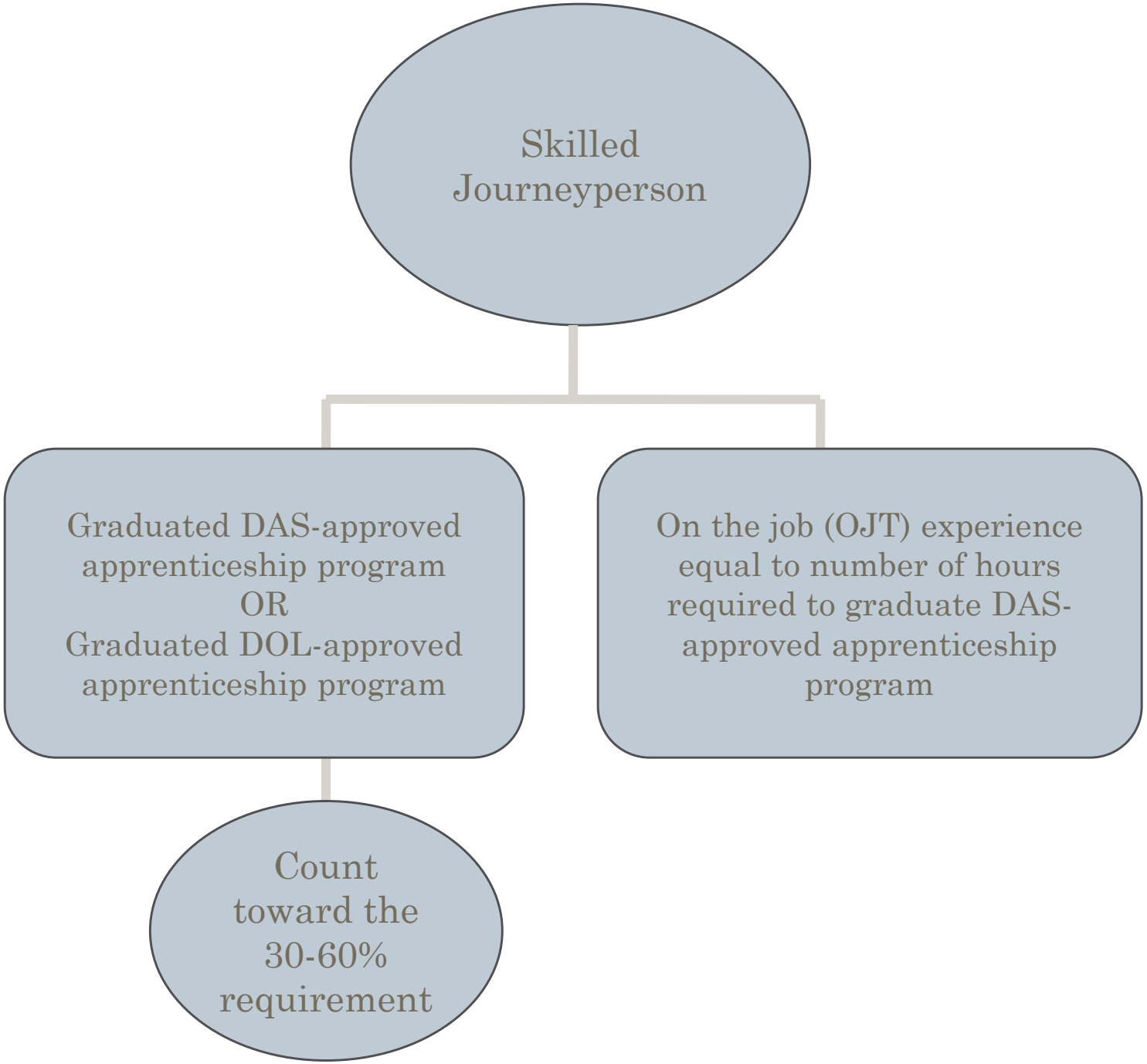
Public Contract Code §2601(e)

A **Skilled Journeyperson** is a worker who **EITHER**:

- **Graduated from a DAS-approved apprenticeship program** for the applicable occupation or a **DOL-approved apprenticeship program** outside California **OR**

- Has at least as many **hours of on-the-job experience** in the applicable occupation **as would be required to graduate** from a DAS-approved apprenticeship program

- **Workers that have not graduated from an approved apprenticeship program or do not have the required on the job training hours are not considered skilled journeypersons and should not be allowed to work on skilled and trained workforce requirement projects.**


Skilled Journeyperson
Graduated DAS-approved apprenticeship program OR Graduated DOL-approved apprenticeship program
On the job (OJT) experience equal to number of hours required to graduate DAS-approved apprenticeship program
Count toward the 30-60% requirement

# POLL QUESTION #1

## SKILLED AND TRAINED WORKFORCE

A skilled and trained workforce includes all of the following except?

- A. DIR registered apprentices
- B. Journeymen who have graduated from an approved apprenticeship program
- C. Journeymen who have the number of on the job hours needed to graduate from an apprenticeship program
- D. Unregistered apprentices or Journeymen with no on the job training

# POLL QUESTION #1

## SKILLED AND TRAINED WORKFORCE

A skilled and trained workforce includes all of the following except?

- A. DIR registered apprentices
- B. Journeymen who have graduated from an approved apprenticeship program
- C. Journeymen who have the number of on the job hours needed to graduate from an apprenticeship program
- D. Unregistered apprentices or Journeymen with no on the job training

# POLL QUESTION #2

## SKILLED AND TRAINED WORKFORCE

A skilled journeyperson who has worked the number of on the job hours required to graduate from an approved apprenticeship program may be counted in the graduation percentage requirement?

- A. Yes
- B. No
- C. Not Sure

# POLL QUESTION #2

## SKILLED AND TRAINED WORKFORCE

A skilled journeyperson who has worked the number of on the job hours required to graduate from an approved apprenticeship program may be counted in the graduation percentage requirement?

- A. Yes
- B. No
- C. Not Sure

# STW Apprenticeship Graduation Requirement

# Graduation Percentage Requirement

| Applies to work performed on or after: | % of journeypersons who must be graduates of apprenticeship program: | Not applicable to work performed by the following trades/occupations: | Authority |
|---|---|---|---|
| January 1, 2017 | 30% | Teamster. | Pub. Contract Code §2601 (d)(2)(A) |
| January 1, 2018 | 40% | Acoustical installer, bricklayer, carpenter, cement mason, drywall installer or lather, marble mason, finisher, or setter, modular furniture or systems installer, operating engineer, pile driver, plasterer, roofer or waterproofer, stone mason, surveyor, **teamster**, terrazzo worker or finisher, and tile layer, setter, or finisher. | Pub. Contract Code §2601 (d)(2)(B) |
| January 1, 2019 | 50% | Same as above. (Including Teamster.) | Pub. Contract Code §2601 (d)(2)(C) |
| January 1, 2020 | 60% | Same as above. (Including Teamster.) | Pub. Contract Code §2601 (d)(2)(D) |

# Graduation Percentage Requirement

| Period Beginning | Period Ending | Classification | Minimum Graduation Percentage Required |
|---|---|---|---|
| 1/1/2017 | 12/31/2017 | Teamster | 0.00% |
| | | All Others | 30.00% |
| 1/1/2018 | 12/31/2018 | Teamster | 0.00% |
| | | Acoustical installer, bricklayer, carpenter, cement mason, drywall installer or lather, marble mason, finisher, or setter, modular furniture or systems installer, operating engineer, pile driver, plasterer, roofer or waterproofer, stone mason, surveyor, teamster, terrazzo worker or finisher, and tile layer, setter, or finisher | 30.00% |
| | | All Others | 40.00% |
| 1/1/2019 | 12/31/2019 | Teamster | 0.00% |
| | | Acoustical installer, bricklayer, carpenter, cement mason, drywall installer or lather, marble mason, finisher, or setter, modular furniture or systems installer, operating engineer, pile driver, plasterer, roofer or waterproofer, stone mason, surveyor, teamster, terrazzo worker or finisher, and tile layer, setter, or finisher | 30.00% |
| | | All Others | 50.00% |
| 1/1/2020 | N/A | Teamster | 0.00% |
| | | Acoustical installer, bricklayer, carpenter, cement mason, drywall installer or lather, marble mason, finisher, or setter, modular furniture or systems installer, operating engineer, pile driver, plasterer, roofer or waterproofer, stone mason, surveyor, teamster, terrazzo worker or finisher, and tile layer, setter, or finisher | 30.00% |
| | | All Others | 60.00% |

# POLL QUESTION #3

| Applies to work performed on or after: | % of journeypersons who must be graduates of apprenticeship program: | Not applicable to work performed by the following trades/occupations: |
|---|---|---|
| January 1, 2017 | 30% | Teamster. |
| January 1, 2018 | 40% | Acoustical installer, bricklayer, carpenter, cement mason, drywall installer or lather, marble mason, finisher, or setter, modular furniture or systems installer, operating engineer, pile driver, plasterer, roofer or waterproofer, stone mason, surveyor, teamster, terrazzo worker or finisher, and tile layer, setter, or finisher. |
| January 1, 2019 | 50% | Same as above. (Including Teamster.) |
| January 1, 2020 | 60% | Same as above. (Including Teamster.) |

Based on the graduation percentage chart, a project bid on June 1st, 2019 using the Carpenter craft would have which graduation percentage requirement for this craft?

- A. 50%
- B. 30%
- C. 40%
- D. 60%
- E. Not Sure

# POLL QUESTION #3

| Applies to work performed on or after: | % of journeypersons who must be graduates of apprenticeship program: | Not applicable to work performed by the following trades/occupations: |
|---|---|---|
| January 1, 2017 | 30% | Teamster. |
| January 1, 2018 | 40% | Acoustical installer, bricklayer, carpenter, cement mason, drywall installer or lather, marble mason, finisher, or setter, modular furniture or systems installer, operating engineer, pile driver, plasterer, roofer or waterproofer, stone mason, surveyor, teamster, terrazzo worker or finisher, and tile layer, setter, or finisher. |
| January 1, 2019 | 50% | Same as above. (Including Teamster.) |
| January 1, 2020 | 60% | Same as above. (Including Teamster.) |

Based on the graduation percentage chart, a project bid on June 1st, 2019 using the Carpenter craft would have which graduation percentage requirement for this craft?

- A. 50%
- B. 30%
- C. 40%
- D. 60%
- E. Not Sure

# APPRENTICESHIP GRADUATION PERCENTAGE REQUIREMENT

- The graduation percentage requirement may be satisfied by **EITHER** using the **head count** of apprenticeship program graduates or **percentage of hours worked** by apprenticeship program graduates in a particular **calendar month**:

  - The method used to calculate the graduation percentage can be changed month to month based on the contractors workforce on that month and which calculation will allow them to meet the graduation percentage requirement.

# APPRENTICESHIP GRADUATION PERCENTAGE REQUIREMENT

- **Head Count -** At least the required percentage of the Skilled Journeypersons employed by the contractor or subcontractor to perform work on the contract or project meet the graduation percentage requirement.
  - Example: Graduation percentage requirement - 60%
  - Contractor employs 10 Skilled Journeypersons:
    - 6 skilled journeypersons must be graduates of apprenticeship program.
    - 4 skilled journeypersons may have on the job hours.
    - 6 apprenticeship program graduates out of 10 skilled journeypersons = 60% graduation requirement met

$$\frac{\text{Total number of Graduated J/M}}{\text{Total number of J/M (Graduates+OJT)}} = \text{\% of Graduated J/M}$$

# APPRENTICESHIP GRADUATION PERCENTAGE REQUIREMENT

- **Hours Worked Percentage Count** – The percentage of hours of work performed by Skilled Journeypersons employed by the contractor or subcontractor on the project, who met the graduation requirement is at least equal to the required graduation percentage.
  - Example: Graduation percentage requirement - 60%
  - Hours worked in a month: 100 hours
    - At least 60 hours must be worked by graduates of apprenticeship program to meet requirement.
    - 40 hours may be worked by skilled journeypersons with on the job hours.
    - 60hrs worked by apprenticeship graduates/100hrs worked in total = 0.6 x 100 = 60% graduation requirement met.

$$\frac{\textbf{Total hours performed by Graduated J/M}}{\textbf{Total hours performed by J/M (Graduates+OJT)}} = \textbf{\% of hours performed by Graduated J/M}$$

# POLL QUESTION #4

## SKILLED AND TRAINED WORKFORCE

| Classification | Total Number of Skilled Journeypersons | Number of Skilled Journeypersons Graduated From Apprenticeship Program | Number of Skilled Journeypersons With On The Job Training | Graduation Percentage Requirement |
|---|---|---|---|---|
| Laborer | 13 | 6 | 7 | 60% |

Does this workforce meet the skilled and trained workforce graduation percentage requirement for the month?

- A. Yes
- B. No
- C. Not sure

# POLL QUESTION #4

## SKILLED AND TRAINED WORKFORCE

| Classification | Total Number of Skilled Journeypersons | Number of Skilled Journeypersons Graduated From Apprenticeship Program | Number of Skilled Journeypersons With On The Job Training | Graduation Percentage Requirement |
|---|---|---|---|---|
| Laborer | 13 | 6 | 7 | 60% |

Does this workforce meet the skilled and trained workforce graduation percentage requirement for the month?

- A. Yes
- B. No – 6 / 13 = 46%
- C. Not sure

# EXCEPTIONS TO THE APPRENTICESHIP GRADUATION PERCENTAGE REQUIREMENT

- **If no DAS-approved apprenticeship program existed before January 1, 1995** for any apprenticeable craft**:**
  - **Up to one-half (1/2) of the graduation percentage requirements may be satisfied** by Skilled Journeypersons who commenced working in the apprenticeable craft before DAS approved an apprenticeship program for that craft in the county in which the project is located.

- A contractor or subcontractor does not need to meet the graduation percentage requirements for any apprenticeable craft in which it **performs less than 10 hours of work** during that calendar month.

# EXCEPTIONS TO THE APPRENTICESHIP GRADUATION PERCENTAGE REQUIREMENT

- A subcontractor does not need to meet the graduation percentage requirements (for all crafts it employs) if **BOTH** of the following requirements are met:
  - Subcontractor was **not a listed on the bid** pursuant to Pub. Contract Code §4104* or performing work as a substitute for a subcontractor that was listed.
  - Subcontract does not exceed **one-half of 1 percent (1/2%)** of the price of the prime contract.
- NOTE: These exceptions apply only to the graduation percentage requirements– NOT to the STW requirements generally.

# Monthly Report Compliance & Public Entity/Awarding Body Obligations Under Public Contract Code §2602.

# Monthly Reports & Awarding Body Obligations

Public Contract Code §2602

# FAILURE TO PROVIDE OR INCOMPLETE MONTHLY REPORT

Public Contract Code §2602(b)

- If the prime contractor fails to provide the monthly report, or provides an incomplete one, the awarding body (AB) **shall withhold further payments until a complete report is provided**.
- If a monthly report is **incomplete because a subcontractor** failed to timely submit the required information to the contractor:
  - AB shall withhold an amount only equal to **150 percent (150%)** of the value of the **monthly billing** for the **relevant subcontractor**.
  - The **prime contractor may withhold the same amount from the subcontractor** until the subcontractor provides a complete report and the AB pays the contractor the withheld payments.
- **AB required to immediately resume making payments** to the contractor (including all previously withheld payments) if the **contractor substitutes a subcontractor** for its failure to provide a complete report and replaces it with one that provides an enforceable commitment to use a STW to complete the work.

# MONTHLY REPORT FAILING TO DEMONSTRATE COMPLIANCE

Public Contract Code §2602(c)

- If a **monthly report does not demonstrate compliance** with the STW requirements the **AB is required to do <u>ALL</u>** of the following:

- **Withhold further payments** until the contractor provides a plan to achieve "substantial compliance" with regard to the relevant trade/craft prior to contract completion.
  - Withholding amount equal to 150 percent (150%) of the value of the monthly billing for the contractor or subcontractor that failed to comply with the STW requirements.
  - Contractor may withhold the same amount from the subcontractor.
  - AB required to immediately resume making payments to the contractor (including all previously withheld payments) if the contractor substitutes a subcontractor for its failure to demonstrate compliance.
  - AB required to immediately resume making payments to the contractor (including all previously withheld payments) if a plan to achieve substantial compliance with the STW requirement is submitted
    - AB may reject the plan as insufficient and explains the reasons for the rejection within a reasonable time.

# MONTHLY REPORT FAILING TO DEMONSTRATE COMPLIANCE

Public Contract Code §2602(c)

- If a **monthly report does not demonstrate compliance** with the STW requirements or the **plan for substantial compliance submitted is rejected** by the awarding body then **AB is required** to do the following:

- **Forward** a copy of the monthly report to the Labor Commissioner for issuance of a Civil Wage and Penalty Assessment.

- **Forward** a copy of the plan to achieve "substantial compliance" (if any), and its response to that plan (if any) to the Labor Commissioner.

# POLL QUESTION #5

## SKILLED AND TRAINED WORKFORCE

A contractor provides a monthly report in which a subcontractor fails to meet the STW requirements and a plan for substantial completion which the awarding body finds is insufficient and will not allow the subcontractor to meet the STW requirements, what should the awarding body do now?

- A. Withhold amount equal to 150 percent (150%) of the value of the monthly billing for the subcontractor that failed to comply with the STW requirements.
- B. Forward a copy of the monthly report to the Labor Commissioner for issuance of a Civil Wage and Penalty Assessment.
- C. Forward a copy of the plan to achieve “substantial compliance” (if any), and its response to that plan (if any) to the Labor Commissioner.
- D. All of the above.

# POLL QUESTION #5

## SKILLED AND TRAINED WORKFORCE

A contractor provides a monthly report in which a subcontractor fails to meet the STW requirements and a plan for substantial completion which the awarding body finds is insufficient and will not allow the subcontractor to meet the STW requirements, what should the awarding body do now?

- A. Withhold amount equal to 150 percent (150%) of the value of the monthly billing for the subcontractor that failed to comply with the STW requirements.
- B. Forward a copy of the monthly report to the Labor Commissioner for issuance of a Civil Wage and Penalty Assessment.
- C. Forward a copy of the plan to achieve "substantial compliance" (if any), and its response to that plan (if any) to the Labor Commissioner.
- D. All of the above.

# The Labor Commissioner's Enforcement Process Under Public Contract Code §2603.

# PENALTIES UNDER CONTRACT CODE §2603

Penalties of **up to $5,000 per month of work performed** in violation of the STW requirements assessed against contractor or subcontractor that failed to use a STW.

- Increased penalties **up to $10,000 per month** for a second or subsequent violation within a three-year period.

Factors considered by the Labor Commissioner in determining penalty amount:

1. Whether the violation was intentional;
2. Whether the contractor or subcontractor has committed other violations of this chapter or of the Labor Code;
3. Whether, upon notice of the violation, the contractor or subcontractor took steps to voluntarily remedy the violation;
4. The extent or severity of the violation; and
5. Whether a contractor or subcontractor submitted and followed a plan to achieve substantial compliance.

# PENALTIES UNDER CONTRACT CODE §2603

- Prime contractors are not liable for penalties for violations of subcontractor unless the prime contractor **had knowledge of the subcontractor's failure to comply OR fails to comply with ANY of the following requirements**:

- For contracts entered into on or after January 1, 2019, the **contract** executed between the contractor and the subcontractor for the performance of work on the project **included a copy of chapter 2.9 of the Public Contract Code**;
- The **contractor periodically monitored** the subcontractor's use of a STW;
- Upon becoming aware of a failure of the subcontractor to use a STW, the **contractor took corrective action**, including, but not limited to, retaining 150% of the amount due to the subcontractor for work performed on the project until the failure is corrected; AND
- Prior to making the final payment to the subcontractor for work performed on the project, the contractor shall **obtain a declaration signed under penalty of perjury** from the subcontractor that the subcontractor has met the requirements of chapter 2.9 of the Public Contract Code.

# LABOR COMMISSIONER'S ENFORCEMENT PROCESS

Violations of the STW requirement are enforced by the Labor Commissioner using the same process set forth in Labor Code §§ 1741 & 1742 currently used for prevailing wage and apprenticeship requirements.

Up to three years of debarment when the Labor Commissioner finds a contractor or subcontractor to have:

- Violated the STW requirements **with the intent to defraud** OR
- Committed **two or more separate willful violations** of the STW requirements **within a 3-year period**.

# SKILLED AND TRAINED WORKFORCE STATUTE & FAQ LINKS

Summary of Skilled and Trained Workforce Statutes:

https://www.dir.ca.gov/Public-Works/ADA-Compliant-STW-Chart-without-New-PRC-Provision.pdf

Skilled and Trained Workforce Frequently Asked Questions:

https://www.dir.ca.gov/Public-Works/ADA-Compliant-STW-FAQ.pdf

# THANK YOU!

Public Works
California Labor Commissioner's Office
Department of Industrial Relations

# PREVAILING WAGE/LABOR COMPLIANCE WEBINAR

## KNOW YOUR DUTIES AND RESPONSIBILITIES UNDER THE LAW

Public Works
California Labor Commissioner's Office
Department of Industrial Relations
July 19, 2022

# Disclaimer

## California Labor Commissioner's Office

The following presentation is intended to summarize relevant portions of existing law in the Labor Code and California Code of Regulations, but those code sections, as interpreted by the courts, will govern actual enforcement. The information contained in this presentation is a general overview of existing law or regulation. Any opinions expressed are solely those of the author/speaker and are not necessarily the official position of the Department of Industrial Relations (DIR), its Director, or any related public entity. The information in this presentation is not intended as legal advice, and does not guarantee any outcome in specific enforcement or coverage proceedings within the jurisdiction of DIR.

# Contractor Responsibilities

## Prevailing Wage

>$1,000

## Contractor Registration

>$15,000

M

>$25,000

CADIR

## Apprenticeship

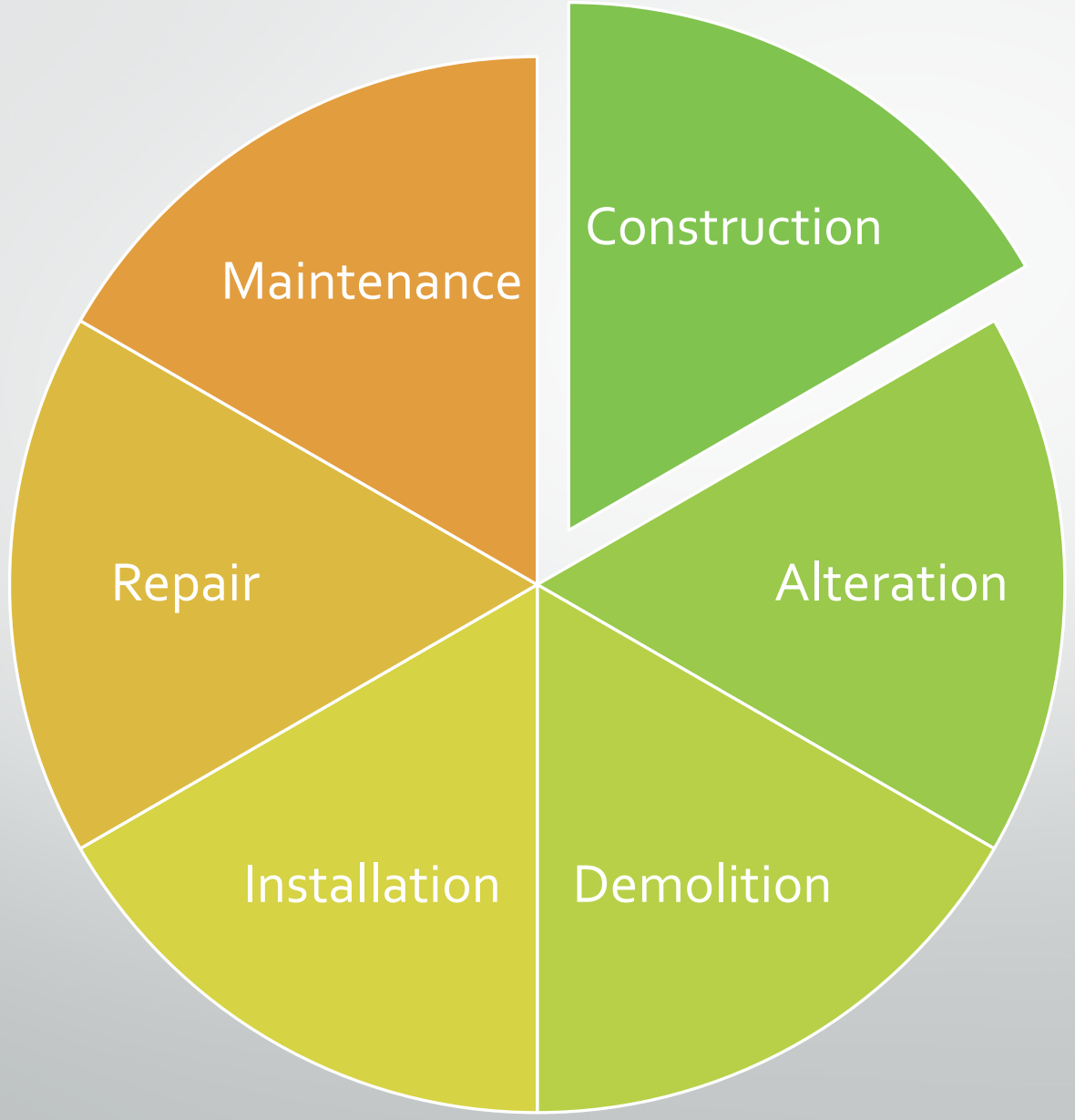
≥$30,000

Labor Code 1771, 1725.5, and 1777.5

# Who is a Public Works Contractor?

Labor Code(s) 1720(1) and 1722.1

# Public Works Project



# Construction (expanded)

Preconstruction

- Design
- Site Assessment
- Feasibility Study
- Inspection
- Land Surveying

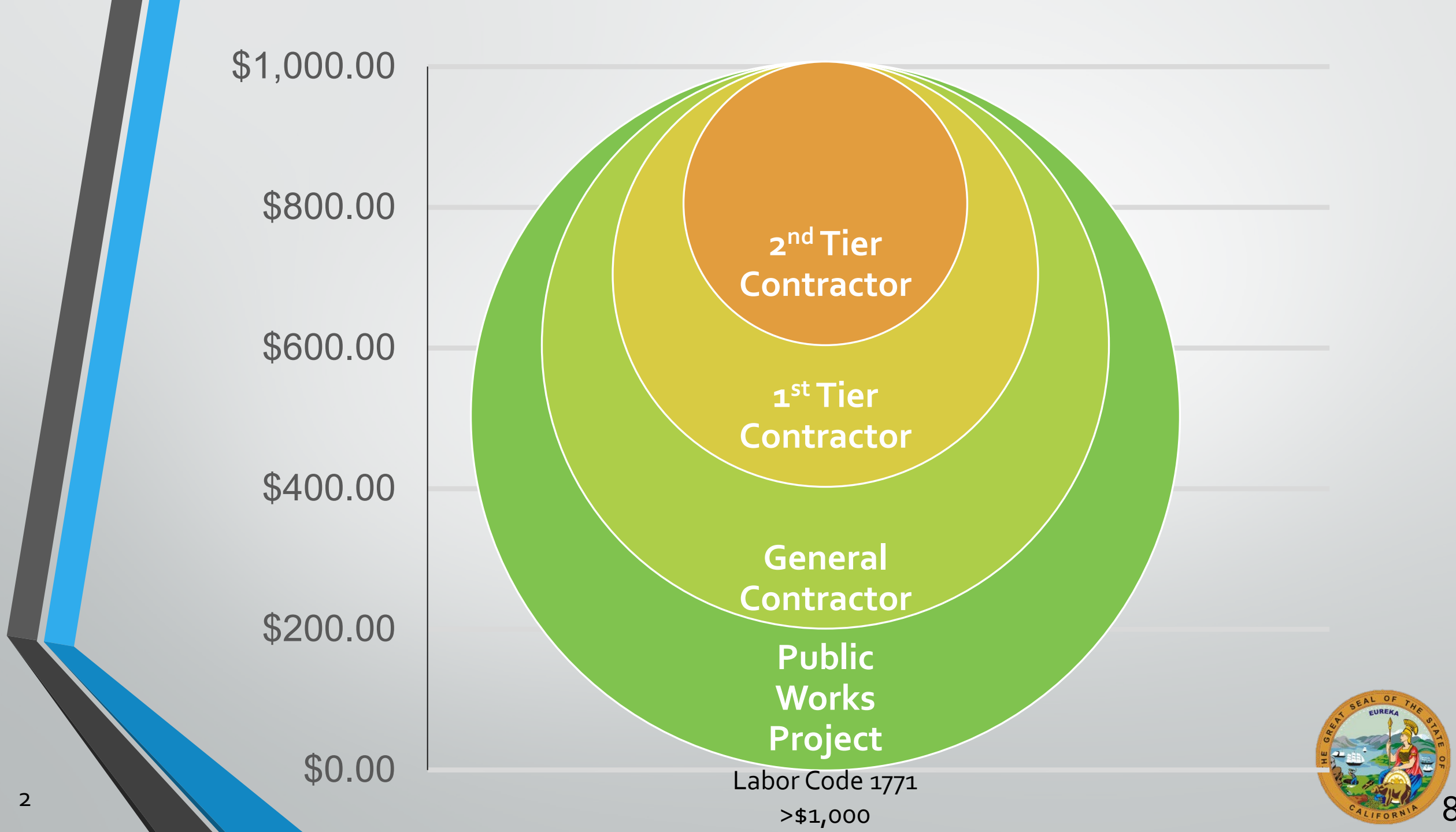
Postconstruction

- Cleanup

# Polling Question 1

What is the threshold for the state prevailing wage requirement when performing work covered work?

a) When the project costs more than $1,000
b) When the general or specialty contract costs more than $1,000
c) When the subcontract costs more than $1,000




Labor Code 1771

>$1,000

# Pay Prevailing Wages

Labor Codes 1771, 1774 and 1813

# Prevailing Wage

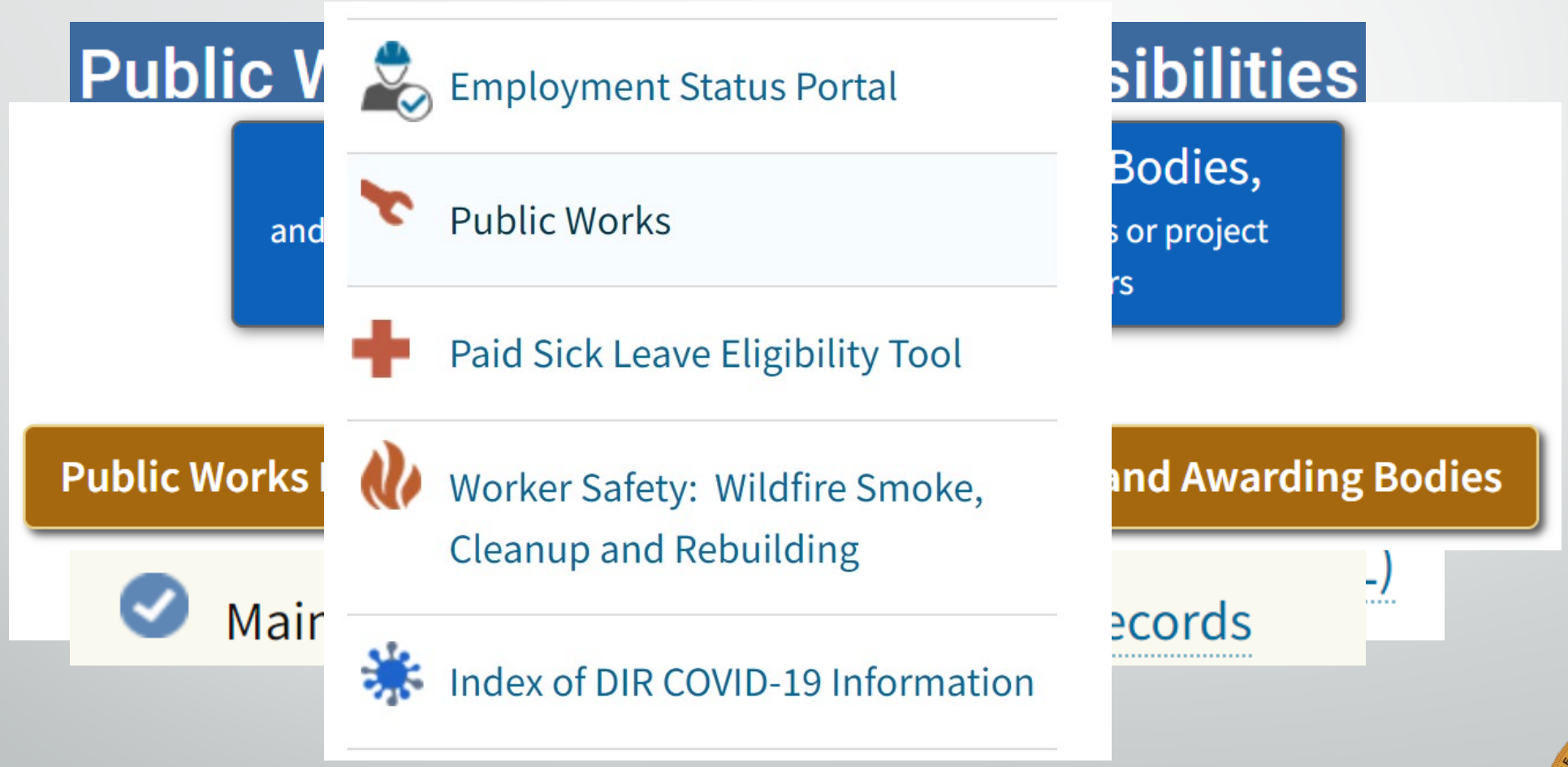
Bid Date or Contract Date

Location of Work

Work Classification

Applicable Wage Determination

# Prevailing Wage Determinations Navigating Website



# Prevailing Wage Determinations Navigating Website

- 2022-1 General prevailing wage determinations menu (journeyman)

First journeyman wage determination published in 2022

First apprentice wage determination published in 2022

Wage determinations published in prior periods

Residential wage determinations published in prior periods

- Frequently asked questions - Prevailing Wage
- Frequently asked questions - Off-Site Hauling
- Still have questions on prevailing wage?

# Journeyman Wage Determinations

| | | |
|---|---|---|
| Step one | Statewide | First examine if your craft's determination is among the basic trades that apply to most counties in California. |
| Step two (A) | Northern California | If you have not found your craft in step one, check this area to see if your craft's determination is one of Northern California's basic trades. |
| Step two (B) | Southern California | If you have not found your craft in step one, check this area to see if your craft's determination is one of Southern California's basic trades. |
| Step three | San Diego | After following steps one and two (B), examine this area if your project is in San Diego County. |
| Step four | County Determinations (subtrades) | If you have not found your craft in steps 1, 2, or 3, choose the county where work is being performed to examine the subtrades. |

# Wage Determination Examined

**Issue Date:**
August 22, 2021

**Effective Date:**
September 1, 2021

**Craft: Drywall Installer/Lather (Carpenter)#**

**Determination:**

**nation:**
til superseded by a new determination issued by the Director of Industrial Relations. Contact the Office of the
5) 703-4774 for the new rates after 10 days from the expiration date, if no subsequent determination is issued.

**Localities:**
All localities within Imperial, Inyo, Kern, Los Angeles, Mono, Orange, Riverside, San Bernardino, San Luis Obispo, Santa Barbara and Ventura counties.

**Wages and Employer Payments:**

| Classification (Journeyperson) | Basic Hourly Rate | Health and Welfare | Pension | Vacation and Holiday [a] | Training | Other [b] | Hours | Total Hourly Rate | Daily Overtime Hourly Rate (1 ½ X) [c] | Saturday Overtime Hourly Rate (1 ½ X) [c] | Sunday/ Holiday Overtime Hourly Rate (2 X) |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Drywall Installer/Lather | $44.44 | $8.00 | $5.66 | $7.16 | $0.62 | $2.77 | 8.0 | $68.65 | $90.87 | $90.87 | $113.09 |

# Issue Date Vs. Effective Date

**February 2022**

| Sun | Mon | Tue | Wed | Thu | Fri | Sat |
|---|---|---|---|---|---|---|
| | | 22 | 23 | 24 | 25 | 26 |
| 27 | 28 | | | | | |

**March 2022**

| Sun | Mon | Tue | Wed | Thu | Fri | Sat |
|---|---|---|---|---|---|---|
| | | 1 | 2 | 3 | 4 | |

**August 2022**

| Sun | Mon | Tue | Wed | Thu | Fri | Sat |
|---|---|---|---|---|---|---|
| | 22 | 23 | 24 | 25 | 26 | 27 |
| 28 | 29 | 30 | 31 | | | |

**September 2022**

| Sun | Mon | Tue | Wed | Thu | Fri | Sat |
|---|---|---|---|---|---|---|
| | | | | 1 | | |

**December 2022**

| Sun | Mon | Tue | Wed | Thu | Fri | Sat |
|---|---|---|---|---|---|---|
| | | | | 1 | 2 | 3 |
| 4 | 5 | 6 | 7 | 8 | 9 | 10 |
| 11 | | | | | | |

# Polling Question 2

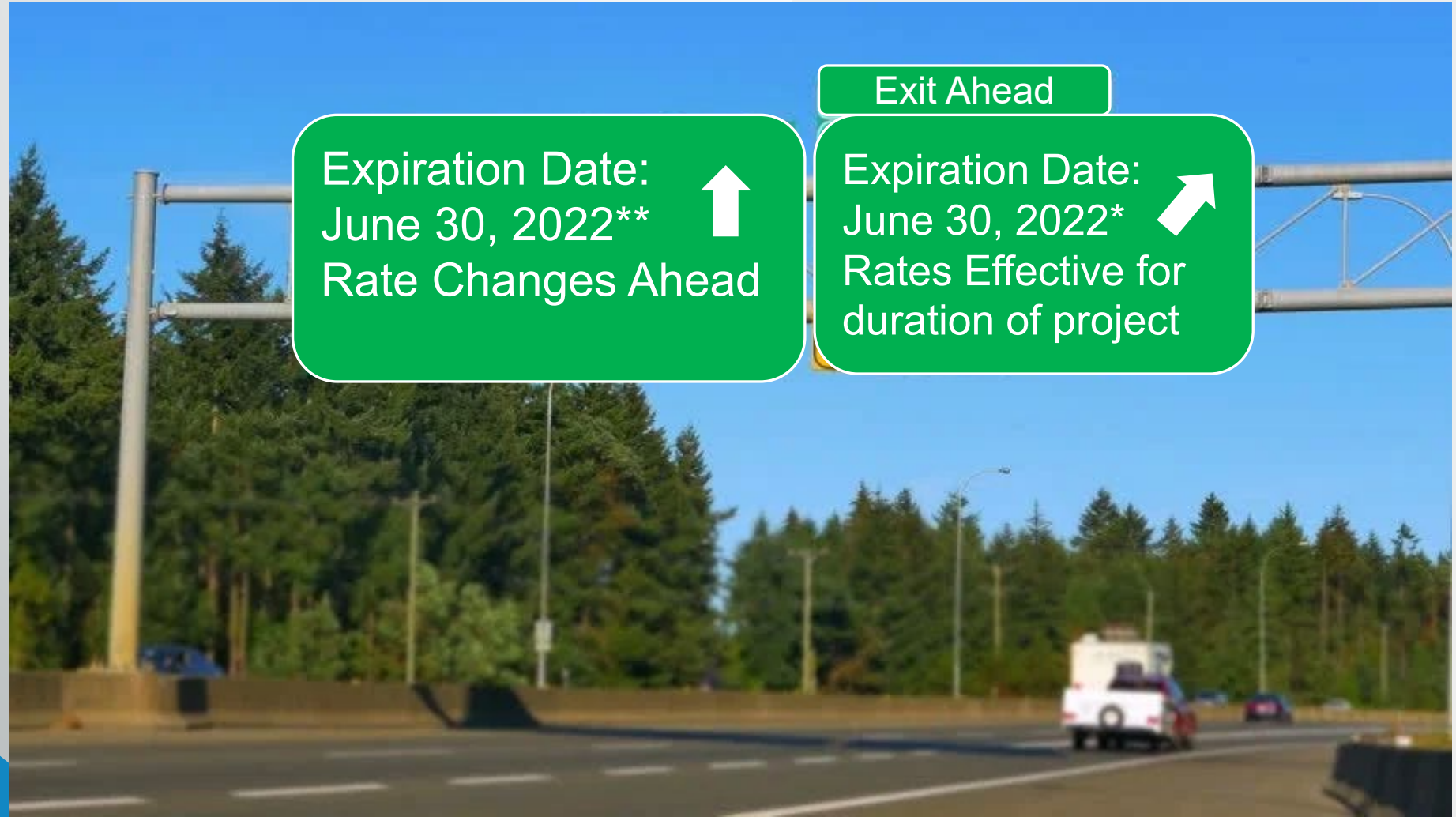
On a wage determination, what symbol indicates a predetermined increase?

a) A single asterisk (*) next to the expiration date

b) A double asterisk (**) next to the expiration date

c) A pound sign or hashtag (#) next to the craft/classification

# Fixed (*) Vs. Variable (**) Wage Determinations



# Wage Determination Examined

**Craft: Drywall Installer/Lather (Carpenter)#**

**Determination:**
SC-31-X-41-2021-1

**Issue Date:**
August 22, 2021

**Expiration date of determination:**
June 30, 2022*

…y a new determination issued by the Director of Industrial Relations. Contact the Office of the …the new rates after 10 days from the expiration date, if no subsequent determination is issued.

**Localities:**
All localities within Imperial, Inyo, Kern, Los Angeles, Mono, Orange, Riverside, San Bernardino, San Luis Obispo, Santa Barbara and Ventura counties.

**Wages and Employer Payments:**

| Classification (Journeyperson) | Basic Hourly Rate | Health and Welfare | Pension | Vacation and Holiday [a] | Training | Other [b] | Hours | Total Hourly Rate | Daily Overtime Hourly Rate (1 ½ X) [c] | Saturday Overtime Hourly Rate (1 ½ X) [c] | Sunday/ Holiday Overtime Hourly Rate (2 X) |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Drywall Installer/Lather | $44.44 | $8.00 | $5.66 | $7.16 | $0.62 | $2.77 | 8.0 | $68.65 | $90.87 | $90.87 | $113.09 |

# Wage Determination Examined

**Craft: Drywall Installer/Lather (Carpenter)#**

**# Indicates apprenticeable classification**

**Determination:**
SC-31-X-41-2021-1

**Issue Date:**
August 22, 2021

**Expiration date of determination:**
June 30, 2022* Effective until superseded by a new determination issued by the Director of Industrial Relations. Contact the Office of the Director - Research Unit (415) 703-4774 for the new rates after 10 days from the expiration date, if no subsequent determination is issued.

**Localities:**
All localities within Imperial, Inyo, Kern, Los Angeles, Mono, Orange, Riverside, San Bernardino, San Luis Obispo, Santa Barbara and Ventura counties.

**Wages and Employer Paymen**

| Classification (Journeyperson) | | | Health and Welfare | Pension | Vacation and Holiday | Training | Other | | Total Hourly Rate | Daily Overtime Hourly Rate (1 ½ X) [c] | Saturday Overtime Hourly Rate (1 ½ X) [c] | Sunday/ Holiday Overtime Hourly Rate (2 X) |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Drywall Installer/Lather | $44.44 | $8.00 | $5.66 | $7.16 | $0.62 | $2.77 | 8.0 | | $68.65 | $90.87 | $90.87 | $113.09 |

# Polling Question 3

Given the information below, which one of the following options do not result in an underpayment?

| | |
|---|---|
| Basic Hourly Rate | $40 |
| Employer Payments (excluding training fund) | $10 |

a) Pay the worker $50 per hour

b) Pay the worker $30 per hour and contribute $20 per hour to the worker in the form of fringe benefits

c) Pay the worker $45 per hour and contribute $5 per hour in the form of fringe benefits

d) (a) and (c)

# Scope, Holiday, Travel, Increases

COUNTY

| Determination | Holidays, scope of work, travel & subsistence | Predetermined increase |
|---|---|---|
| Blacksmith | Select One | No increase * |
| -Hauling To/From Site) | | Increase |

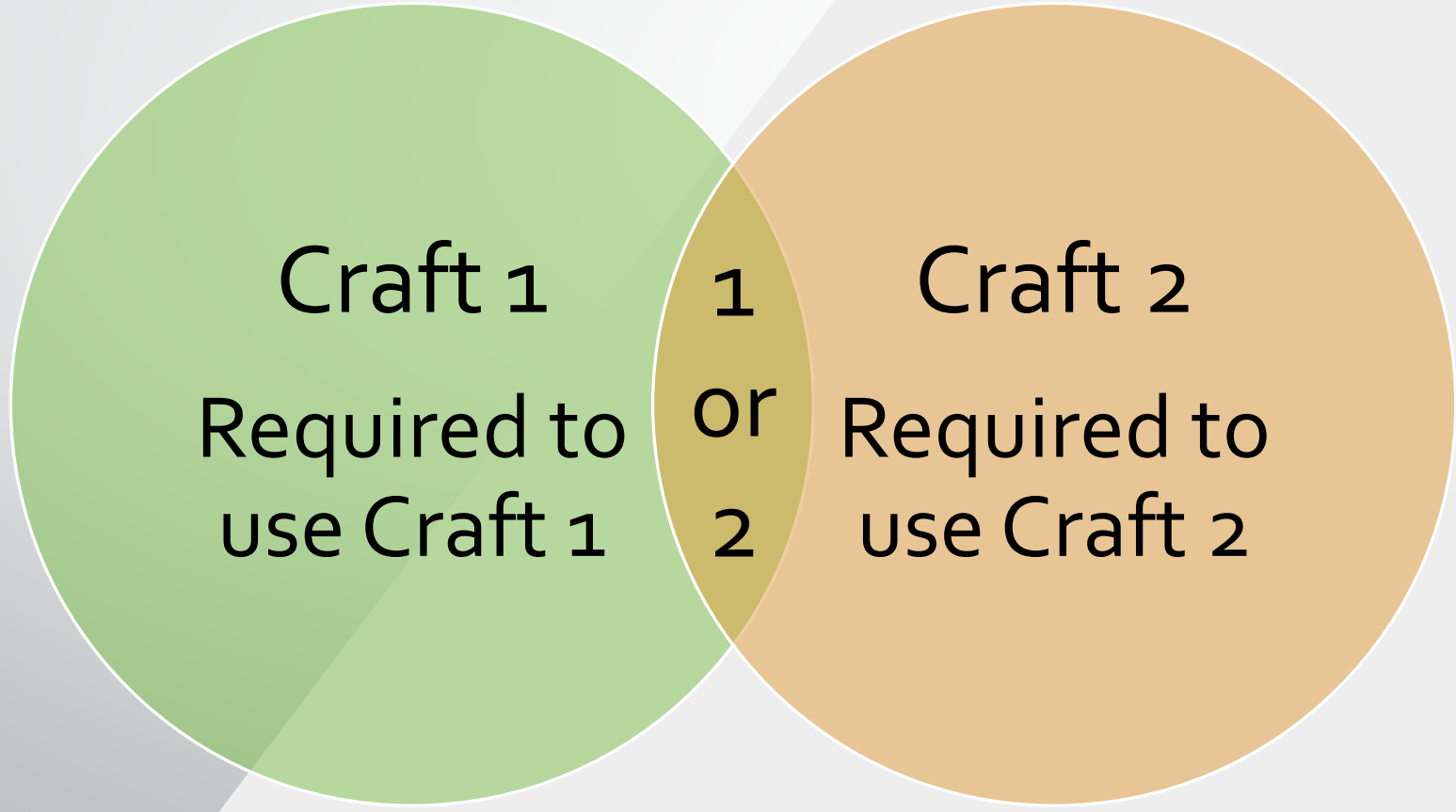
Select One
Holidays
Scope
Travel

| County | Predetermined increase |
|---|---|
| Alameda | Increase |
| Alpine | Increase |

REGION

| CRAFT | CLASSIFICATION | HOLIDAY PROVISIONS | SCOPE OF WORK PROVISIONS | TRAVEL & SUBSISTENCE PROVISIONS |
|---|---|---|---|---|
| #BRICKLAYER, BLOCKLAYER: | BRICKLAYER, BLOCKLAYER, STONEMASON | Holidays | Scope of Work | Travel & Subsistence |

# Work Classification Overlap



# Polling Question 4

There is a predetermined increase indicated on an apprentice wage determination, however the details of the increase were not provided. What rates should you use if work is performed after the expiration date?

a) Continue using the same rates for the duration of the project

b) Continue using the same rates until the next wage determination is published

c) Contact the Office of the Director - Research Unit at statistics@dir.ca.gov and request the breakdown of the predetermined increase

# Office of the Director – Research Unit

Our staff is working remotely and is available to take public inquiries – please see the Contact Us page for information on how to reach us.

For Prevailing Wage questions, please send your inqu Statistics@dir.ca.gov rovide the following information with your inquiry.

- Your name
- Company or agency name
- Email address
- A summary of your question(s)
- Bid Advertisement Date
- Craft(s)/Classification(s)
- County Location of the Project

# Contractor Responsibilities

## Prevailing Wage

>$1,000

## Contractor Registration

>$15,000

M

>$25,000

CADIR

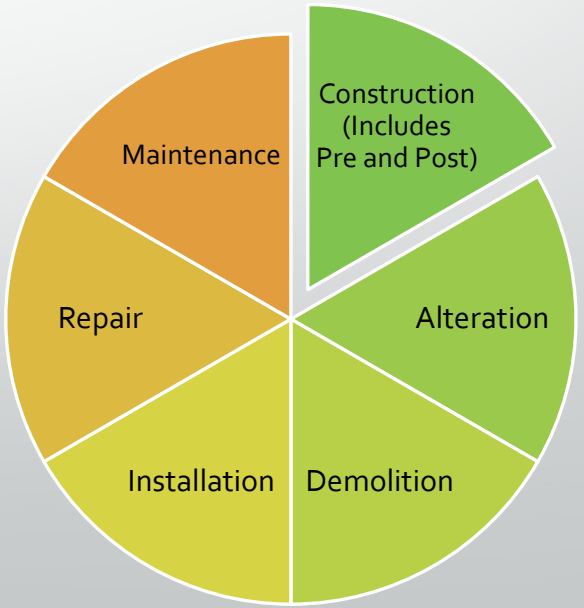
## Apprenticeship

≥$30,000

Labor Code 1771, 1725.5, and 1777.5

# Register as a Public Works Contractor

| | BID | |
|---|---|---|
| | | AMT |
| | General Contractor | $$$ |
| | Subcontractor 1 | $$ |
| | Subcontractor 2 | $$ |
| | Total | $$$$ |




Labor Codes(s) 1725.5 & 1771.1

# Polling Question 5

How may a contractor maximize the period that their contractor registration is valid for?

a) Make sure their registration is valid as of July 1st of each year (the start of the fiscal year)

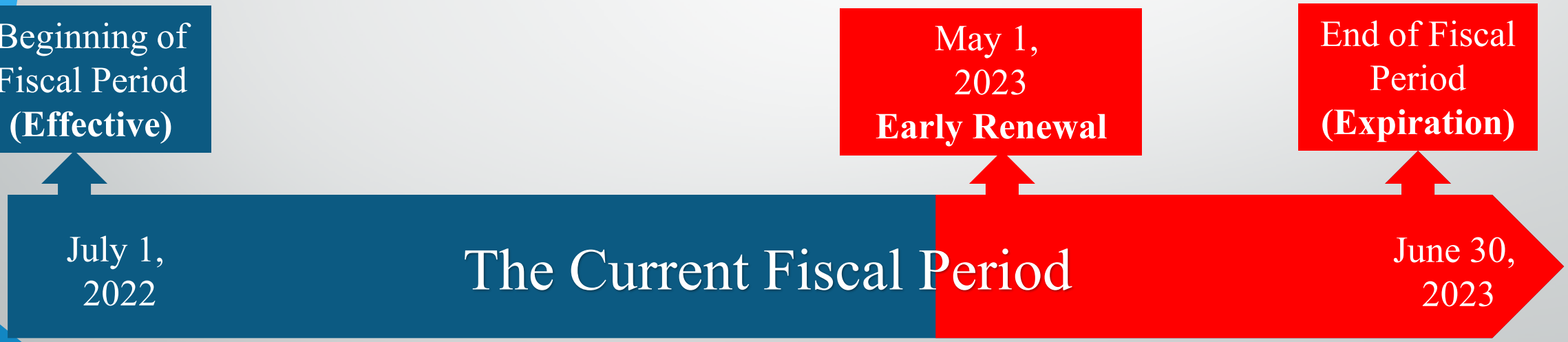
b) Renew their contractor registration during the early renewal period (May 1 - June 30)

c) Make sure to register on January 1 of each year (the start of the calendar year)

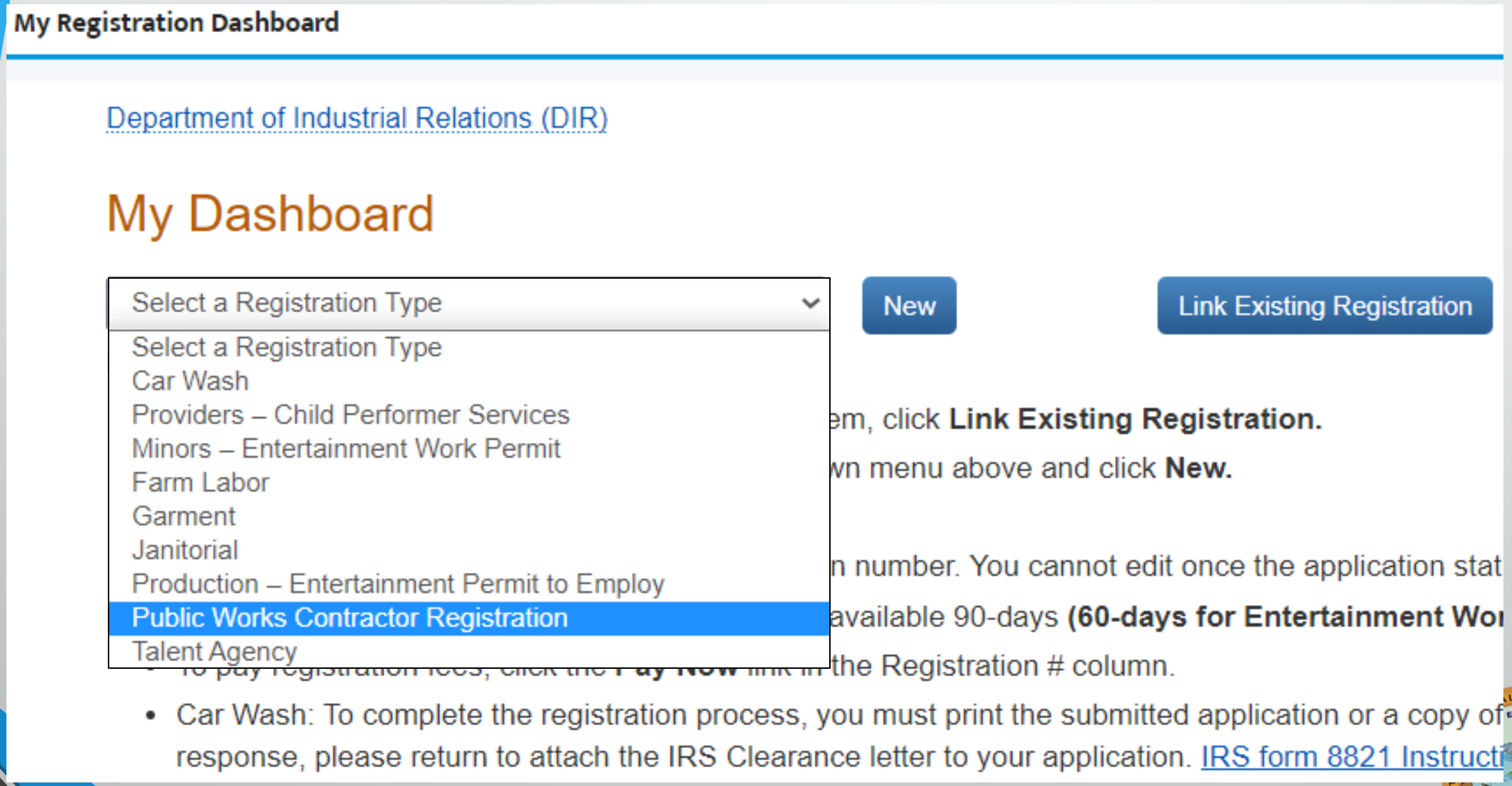
d) a and b

# Fiscal Periods for Registrations

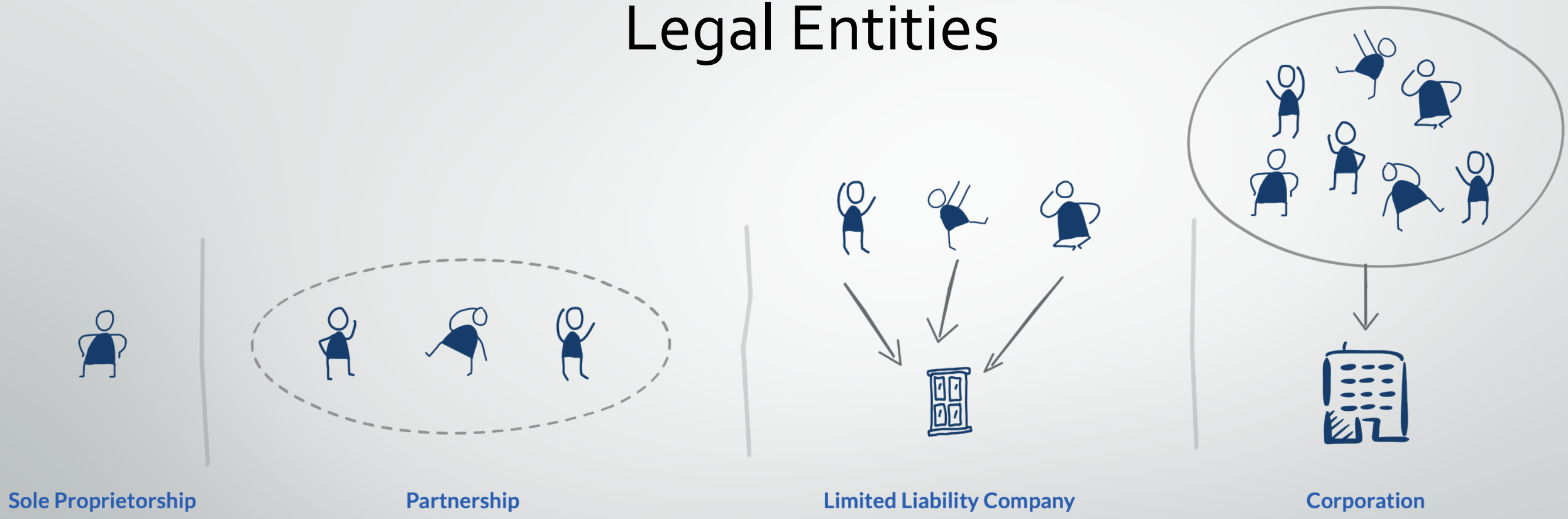
- **Registration is required** in order to bid on projects to be listed on bids, and engage in the performance of public works contracts
  - Participating in these activities without an active registration will result in a lapse in registration.
- Users can register/renew to be active during one, two, or three fiscal periods
  - Fiscal periods cover periods from July 1 thru June 30
  - $400 non-refundable fee per fiscal period



# Public Works Contractor Registration System



# Public Works Contractor Registration
# Legal Entities



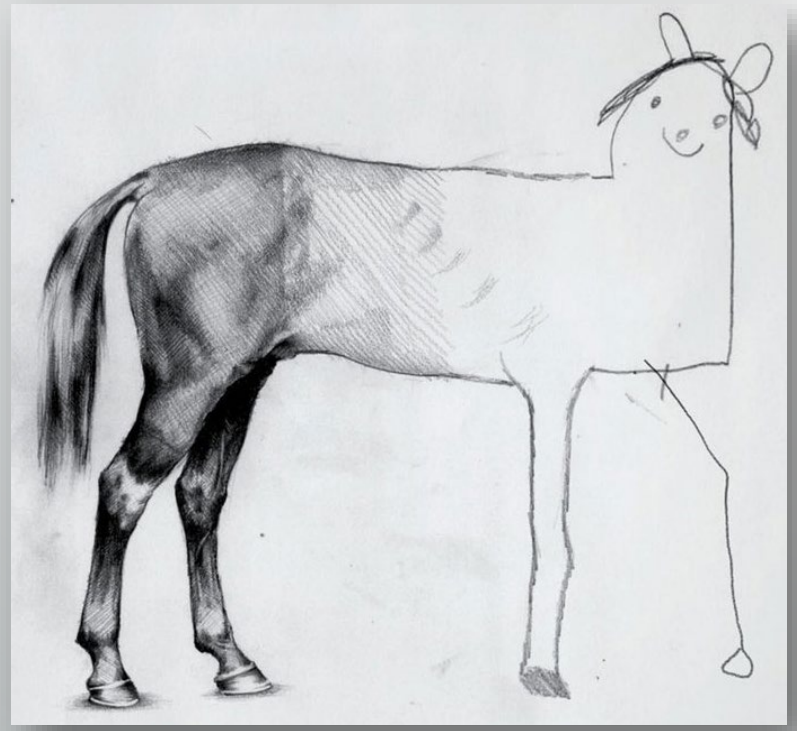

- Public Works Contractor Registrations are valid ***per*** legal entity
- A transition to different legal entity type will require a new registration

# Polling Question 6

What would render payroll records **not** compliant with a Labor Code 1776 request for certified payroll records?

a) If the payroll records are not certified under penalty of perjury
b) If the payroll records do not include **at least** the same information identified in the DLSE Sample Payroll Reporting Form A-1-131
c) All of the above

# Maintain and Furnish Payroll Records



CPR
10 days
>1,000

eCPR
(Online Form)
30 days
>15,000 M
>25,000 CADIR

LC 1776

LC 1771.4

eCPR
(XML file)
30 days
>15,000 M
>25,000 CADIR

Labor Code(s) 1776 and 1771.4

# Polling Question 7

What is the deadline to respond to a Labor Code 1776 Request for Payroll Records from the Labor Commissioner's Office?

a) Ten (10) business days from receipt of request

b) Ten (10) calendar days from receipt of request

c) Thirty (30) days from receipt of request

# Contractor Responsibilities

## Prevailing Wage

>1,000

## Contractor Registration

>15,000

M

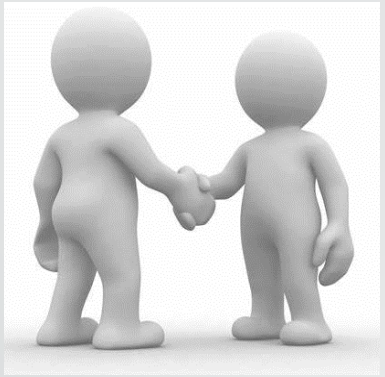
>25,000

CADIR

## Apprenticeship

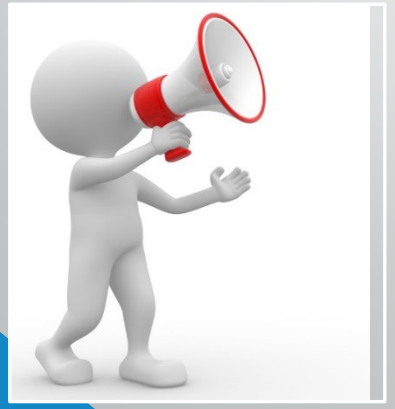
≥30,000

Labor Code 1771, 1725.5, and 1777.5

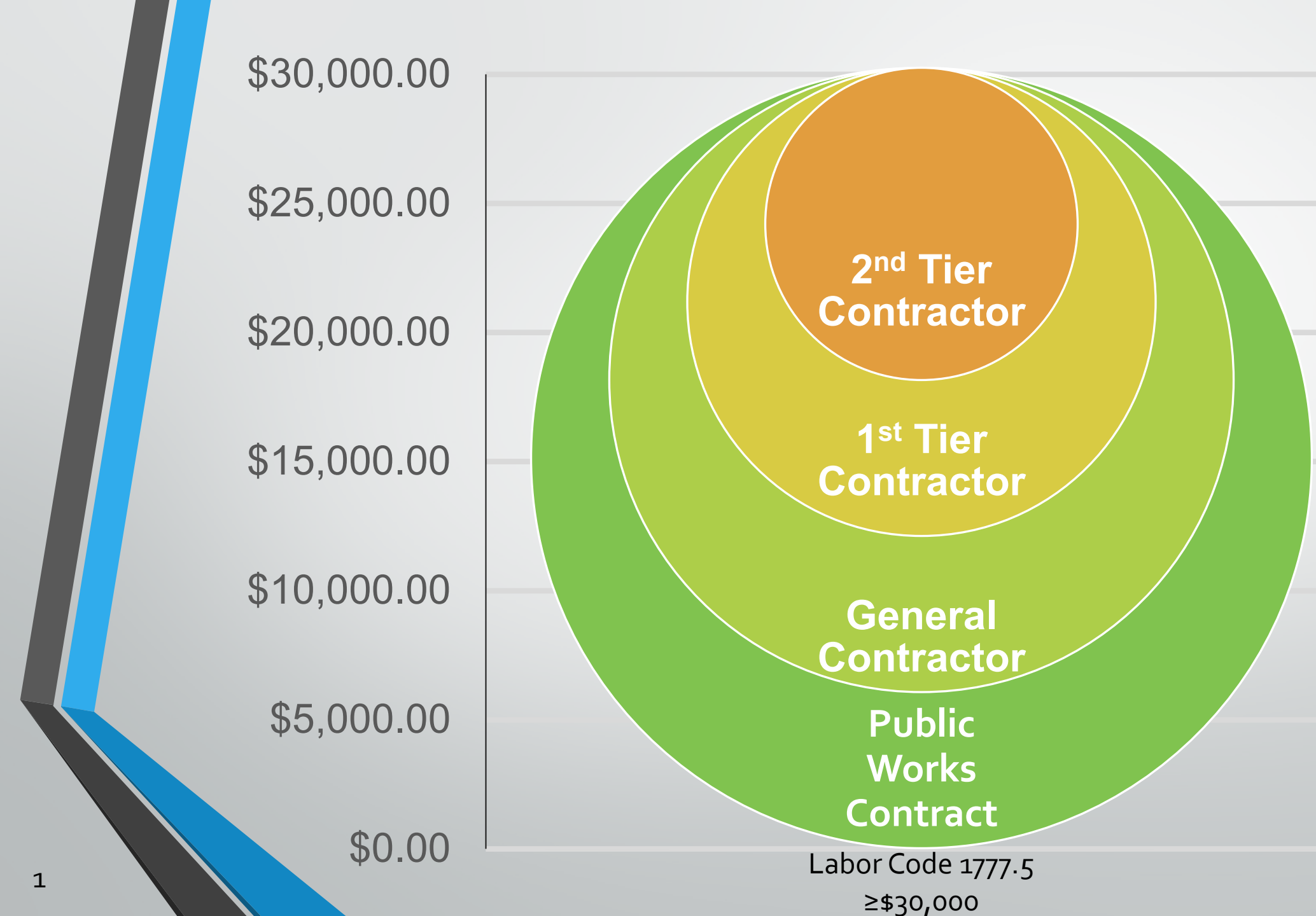


Employ apprentices in at least the minimum ratio

Pay required training fund rate to the applicable committee(s) or CAC.



Notify apprenticeship committees of contract award information




Labor Code 1777.5

≥$30,000

# Wage Determination Examined

**Craft: Drywall Installer/Lather (Carpenter)#**

**# Indicates apprenticeable classification**

**Determination:**
SC-31-X-41-2021-1

**Issue Date:**
August 22, 2021

**Expiration date of determination:**
June 30, 2022* Effective until superseded by a new determination issued by the Director of Industrial Relations. Contact the Office of the Director - Research Unit (415) 703-4774 for the new rates after 10 days from the expiration date, if no subsequent determination is issued.

**Localities:**
All localities within Imperial, Inyo, Kern, Los Angeles, Mono, Orange, Riverside, San Bernardino, San Luis Obispo, Santa Barbara and Ventura counties.

**Wages and Employer Payments:**

| Classification (Journeyperson) | Basic Hourly Rate | Health and Welfare | Pension | Vacation and Holiday [a] | Training | Other [b] | Hours | Total Hourly Rate | Daily Overtime Hourly Rate (1 ½ X) [c] | Saturday Overtime Hourly Rate (1 ½ X) [c] | Sunday/ Holiday Overtime Hourly Rate (2 X) |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Drywall Installer/Lather | $44.44 | $8.00 | $5.66 | $7.16 | $0.62 | $2.77 | 8.0 | $68.65 | $90.87 | $90.87 | $113.09 |

# Polling Question 8

On a wage determination, what does the pound symbol (#) next to the name of the craft indicate?

a) A predetermined increase takes effect after the expiration date
b) The rates are valid for the duration of the project
c) The craft is apprenticeable
d) The craft is **not** apprenticeable

# #Journeyman Hours Worked

Daily Straight Time ≤8hrs

Weekly Straight Time ≤40hrs

Daily Overtime >8hrs

Weekly Overtime >40hrs

Used to Calculate Minimum Apprentice Hours Required

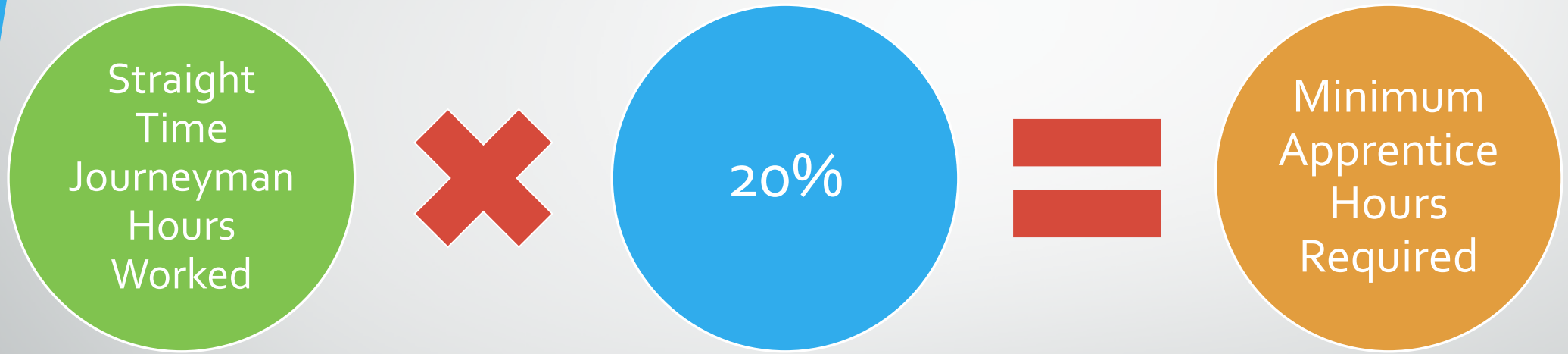
Excluded from Minimum Ratio Calculation

# Apprentice Hours Worked

- Daily Straight Time ≤8hrs
- Weekly Straight Time ≤40hrs
- Daily Overtime >8hrs
- Weekly Overtime >40hrs

Used to Satisfy
Apprentice Hours Required

# Minimum Apprenticeship Ratio



# REQUEST FOR DISPATCH OF AN APPRENTICE – DAS 142 FORM

Department of Industrial Relations
STATE OF CALIFORNIA

**DO NOT SEND THIS FORM TO DAS**

**You may use this form to request dispatch of an apprentice from the Apprenticeship Committee in the craft or trade in the area of the public work. Go to**: http://www.dir.ca.gov/databases/das/pwaddrstart.asp **for information about programs in your area and trade**. You may also consult your local Division Apprenticeship Standards (DAS) office whose telephone number may be found in your local directory under California, State of, Industrial Relations, Division of Apprenticeship Standards. **Except for projects with less than 40 hours of journeyworkers work, you must request and employ apprentices in no less than 8 hour increments.**

**List one occupation/craft per form**

**Date:**

**To Applicable Apprenticeship Committee:**

**Name:**_____

**Address:**_____

_____

**Tel. No.**_____**Fax No.** _____

**Contractor Requesting Dispatch:**

**Name:** _____

**Address:** _____

_____

**License No.** _____

**PWC Registration Number:** _____

**Tel. No.**_____**Fax No.** _____

**Project Information: PWC Project Number** _____ **Contract Number** _____

**Total Contract Amount.** _____ **Sub-Contract Amount** _____

**Name of the Project:**_____

**Address:**_____

**Dispatch Request Information:**

**Number of Apprentice(s) Needed:**_____**Craft or Trade:** _____

**Date Apprentice(s) to Report:**_____**(72 hrs. notice required)** **Time to Report:** _____

**Name of Person to Report to:** _____

**Address to Report to:** _____

_____

# Polling Question 9

Assume a Request for Dispatch of an Apprentice (Form DAS 142) is submitted to the applicable apprenticeship committee on Friday at 5 p.m. for dispatch on the upcoming Monday at 7 a.m. How many hours should be deducted to calculate the hours of notice between the date/time the request was submitted and the dispatch date/time?

a) 24
b) 48
c) 72
d) No hours should be deducted

# At Least 72 Hours' Notice Required

# Polling Question 10

How can you confirm that a worker is a DAS registered apprentice?

a) Using the DAS apprentice search database

b) Ask the worker if they are an apprentice and take their word for it

c) An inexperienced worker is an apprentice by default

# Apprenticeship Status and Safety Training Certification

Apprenticeship status certification for public works

Enter search string ( LLLLF9999 ) here SmitM1234 Search

How to compile the search string:

The search string is a total of nine letters and numbers (no characters ', - , etc): the first four letters of the last name (use spaces to make four letters if the last name is shorter than four letters), the first letter of the first name and the last four digits of the social security number (LLLLF9999). Letters can be entered as lower or upper case.

Examples:

Uncle Sam ssn 123-45-6789 would be entered as Sam U6789

Goddess Minerva ssn 123-45-5555 would be entered as MineG5555

Richard Al-Ham ssn 111-44-1111 would be entered as AlhaR1111

Robert O'Brian ssn 111-22-3333 would be entered as OBriR3333

James McHenry ssn 555-66-1234 might be entered as McHeJ1234 or Mc HJ1234

https://www.dir.ca.gov/das/appcertpw/AppCertSearch.asp

STATE OF CALIFORNIA — Gavin Newsom, *Governor*

DEPARTMENT OF INDUSTRIAL RELATIONS
**DIVISION OF APPRENTICESHIP STANDARDS**
P.O. Box 420603
San Francisco, CA 94142-0603

To whom it may concern:

The Division of Apprenticeship Standards hereby certifies that, according to transactions recorded as of August 25, 2019, the below named individual is registered with the State of California as an apprentice in the occupation during the period between the start date and the end date or completion (comp) date listed below. If there is no end date for an occupation, the Apprentice is currently registered in that occupation. Occupations marked with an asterisk (*) are certified as apprenticeable occupations for Public Works projects. For individuals who have completed an approved 20 hour safety training, the course and the date completed are listed below.

| Name | Occupation | Action | Effective Date | Cert. id |
|---|---|---|---|---|
| Mason Smith | * Cement Mason | Start | 03-02-2016 | SmitM1234 |
| Mason Smith | * Cement Mason | Comp | 12-25-2017 | SmitM1234 |

If you have any questions please contact your local Division of Apprenticeship Standards office.

Glen Forman
Deputy Chief

# Wage Determination Examined

**Craft: Drywall Installer/Lather (Carpenter)#**

**Determination:**
SC-31-X-41-2021-1

**Issue Date:**
August 22, 2021

**Expiration date of determination:**
June 30, 2022* Effective until superseded by a new determination issued by the Director of Industrial Relations. Contact the Office of the Director - Research Unit (415) 703-4774 for the new rates after 10 days from the expiration date, if no subsequent determination is issued.

**Localities:**
All localities within Imperial, Inyo, Kern, Los Angeles, Mono, Orange, Riverside, San Bernardino, San Luis Obispo, Santa Barbara and Ventura counties.

**Wages and Employer Payments:**

| Classification (Journeyperson) | Basic Hourly Rate | Health and Welfare | Pension | Vacation and Holiday [a] | Training | Other [b] | Hours | Total Hourly Rate | Daily Overtime Hourly Rate (1 ½ X) [c] | Saturday Overtime Hourly Rate (1 ½ X) [c] | Sunday/ Holiday Overtime Hourly Rate (2 X) |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Drywall Installer/Lather | $44.44 | $8.00 | $5.66 | $7.16 | $0.62 | $2.77 | 8.0 | $68.65 | $90.87 | $90.87 | $113.09 |

# CAC - Public works Training Fund Search

Training Fund Search

This search function allows awarding agencies, labor and contract compliance organizations, contractors, and other interested parties to view and print a specific contractor's Training Fund contribution paid to the California Apprenticeship Council for the previous 48 months. The payment of the training funds is regulated by California Labor Code 1777.5(m)(1)

Please enter the contractor's license number to begin search.

If you do not know the contractor's license number you may search for it at this site: www.cslb.ca.gov

For employers without a Contractor's license you may look up the id number that was assigned

987654 Submit

Don't see your recent training fund contribution in the payment history?

Possible reasons:
1) Wrong Remit address, our current remit address is as follows:
Department of Industrial Relations
California Apprenticeship Council
P. O. Box 511283
Los Angeles, CA 90051-7838

dir.ca.gov/CAC/trainingfund/Tfsearch.html

**CALIFORNIA APPRENTICESHIP COUNCIL**
P.O. Box 420603
San Francisco, CA 94142-0603
(415) 703-4920

Re: Training Fund Contribution Inquiry for:
ACME, Inc.
9876 Ocean Blvd
Long Beach, CA 90802

Lic.# 987654

To whom it may concern:

The California Apprenticeship Council hereby certifies that, according to transactions recorded as of August 25, 2019, the training fund contributions shown below have been received from the contractor above during the last four years. The contributions are sorted by County, Check date, Project and Occupation.

| County / Project | Occupation | Check date | Amount in $ |
|---|---|---|---|
| Los Angeles SP-98765 | Cement Masons | 04/05/2017 | 97.92 |
| Los Angeles SP-98765 | Laborers | 04/05/2017 | 142.14 |

If you have any questions please contact the Division of Apprenticeship Standards. trainingfund@dir.ca.gov

Glen Forman
for the Secretary, California Apprenticeship Council

# PUBLIC WORKS CONTRACT AWARD INFORMATION

Contract award information must be sent to your Apprenticeship Committee if you are approved to train. **If you are not approved to train, you must send the information (which may be this form) to ALL applicable Apprenticeship Committees in your craft or trade in the area of the site of the public work. Go to: http://www.dir.ca.gov/databases/das/pwaddrstart.asp for information about programs in your area and trade.** You may also consult your local Division of Apprenticeship Standards (DAS) office whose telephone number may be found in your local directory under California, State of, Industrial Relations, Division of Apprenticeship Standards.

## Do not send this form to the Division of Apprenticeship Standards.

| | |
|---|---|
| NAME OF YOUR COMPANY | CONTRACTOR'S STATE LICENSE NO |
| MAILING ADDRESS- NUMBER & STREET, CITY, ZIP CODE | AREA CODE & TELEPHONE NO. |
| NAME & ADDRESS OF PUBLIC WORKS PROJECT | DATE YOUR CONTRACT EXECUTED |
| | DATE OF EXPECTED OR ACTUAL START OF PROJECT |
| NAME & ADDRESS OF PUBLIC AGENCY AWARDING CONTRACT | ESTIMATED NUMBER OF JOURNEYMEN HOURS |
| | OCCUPATION OF APPRENTICE |
| THIS FORM IS BEING SENT TO: (NAME & ADDRESS OF APPRENTICESHIP PROGRAM(S)) | ESTIMATED NUMBER OF APPRENTICE HOURS |
| | APPROXIMATE DATES TO BE EMPLOYED |

## *This is not a request for dispatch of apprentices.*

*Contractors must make a separate request for actual dispatch, in accordance with Section 230.1(a) California Code of Regulations*

*Check One Of The Boxes Below*

1. ☐ We are already approved to train apprentices by the _____ Apprenticeship Committee. We will employ and train under their Standards.
   Enter name of the Committee

2. ☐ We will comply with the standards of _____ Apprenticeship Committee for the duration of this job only.
   Enter name of the Committee

3. ☐ We will employ and train apprentices in accordance with the California Apprenticeship Council regulations, including § 230.1 (c) which requires that apprentices employed on public projects can only be assigned to perform work of the craft or trade to which the apprentice is registered and that the apprentices must at all times work with or under the direct supervision of journeyman/men.

*Signature* _____ *Date* _____

*Typed Name* _____

*Title* _____

**State of California - Department of Industrial Relations DIVISION OF APPRENTICESHIP STANDARDS**

| | Minimum Ratio | Contract Award Information | Maximum Ratio | Journeyman On Duty |
|---|---|---|---|---|
| Box 1 | One apprentice hour for every five journeyman hours | May be sent only to apprenticeship committee that approved the contractor | May be found in the apprenticeship standards under which the contractor has agreed to be bound by. Calculated at the end of the project and not on a daily basis. | Not a CAC Regulation but will enforce DAS approved apprenticeship standards |
| Box 2 | | Must be sent to all applicable apprenticeship committees | | |
| Box 3 | | | Not Applicable<br><br>Not a CAC Regulation | Apprentices must work with or under a journeyman at all times. |

# Contractor Responsibilities

## Prevailing Wage

>$1,000

## Contractor Registration

>$15,000

M

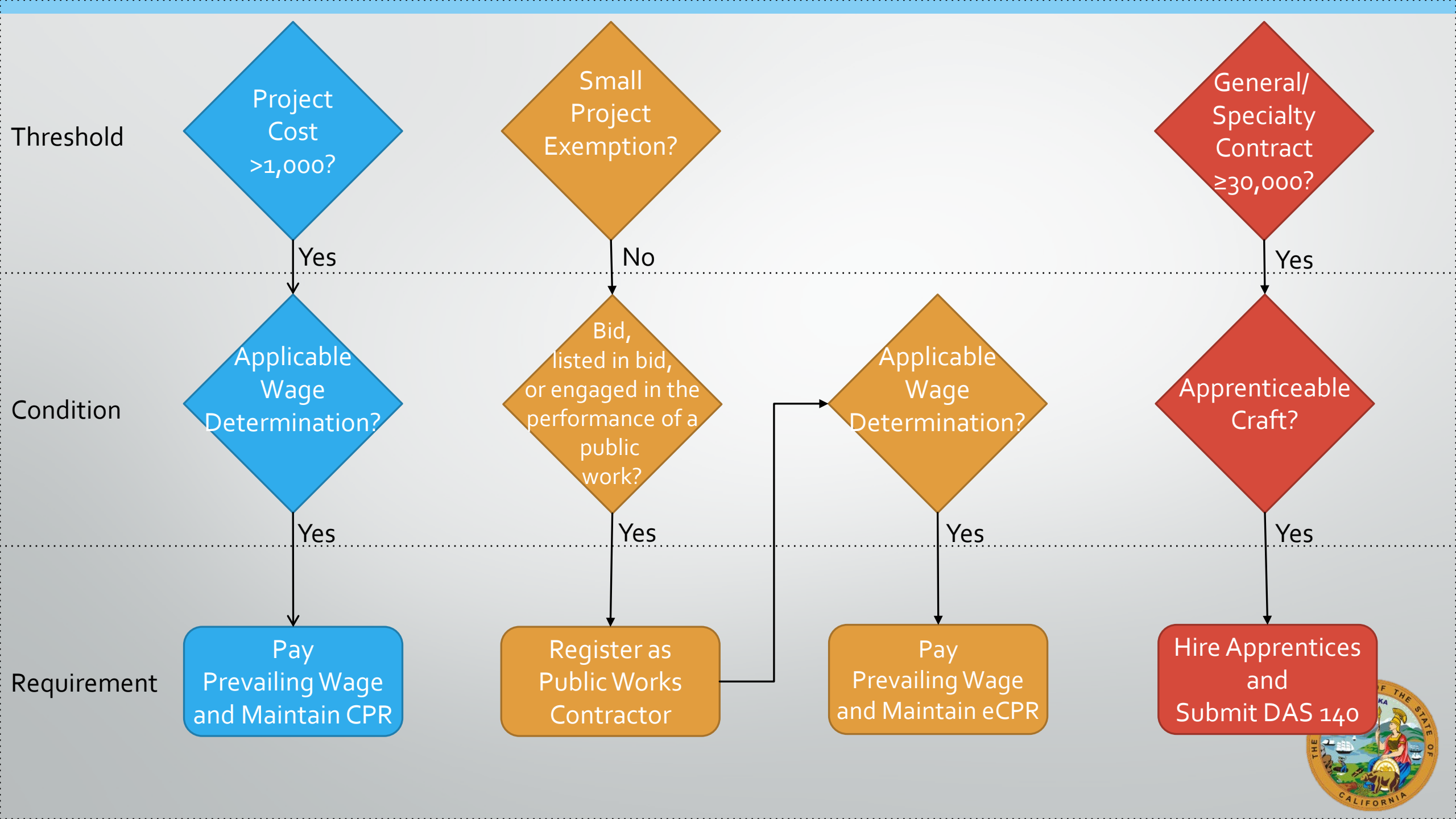
>$25,000

CADIR

## Apprenticeship

≥$30,000

Labor Code(s) 1771, 1725.5, and 1777.5


Threshold
Condition
Requirement
Project Cost >1,000?
Yes
Applicable Wage Determination?
Yes
Pay Prevailing Wage and Maintain CPR
Small Project Exemption?
No
Bid, listed in bid, or engaged in the performance of a public work?
Yes
Register as Public Works Contractor
Applicable Wage Determination?
Yes
Pay Prevailing Wage and Maintain eCPR
General/ Specialty Contract ≥30,000?
Yes
Apprenticeable Craft?
Yes
Hire Apprentices and Submit DAS 140

# Contractor Responsibilities

## Prevailing Wage

≤$200 Per Calendar Day of Noncompliance Per Worker

## Contractor Registration

Subcontracting With Unregistered Contractor $100/day 10,000/project

Engaged in Performance of Public Work Contract $100/day $8,000/project

## Apprenticeship

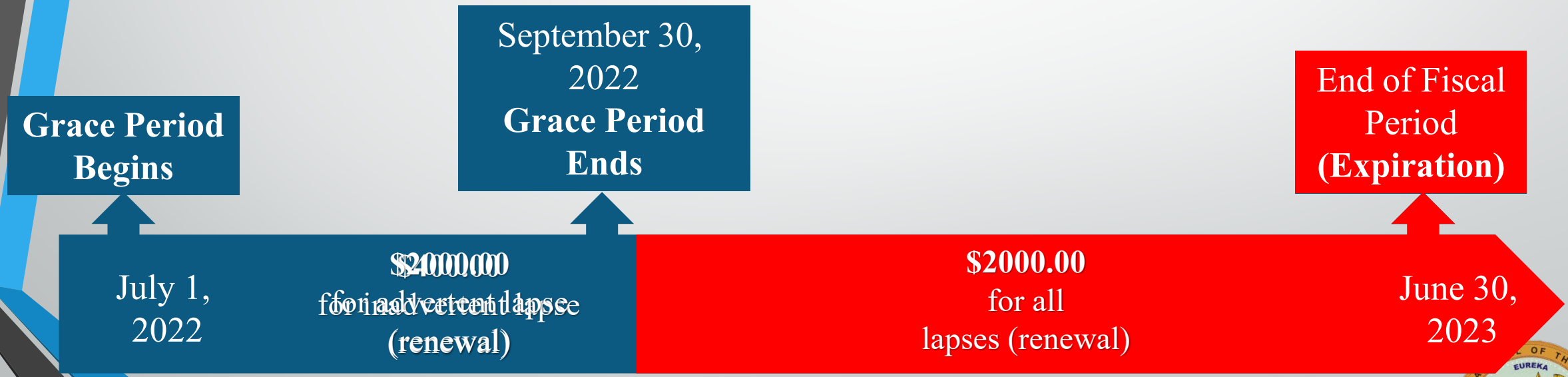
≤$300 Per Calendar Day of Noncompliance

Labor Code(s) 1775(a) (1), 1771.1 (g) and (h) (1), and 1777.7

# Contractor Responsibilities

***Late <u>Renewal</u>:***

- *Grace period:* ***$400.00*** *penalty for an inadvertent lapse,* ***$2000.00*** *penalty if lapse is not inadvertent*
- *After Grace Period:* ***$2000.00*** *for all lapses*

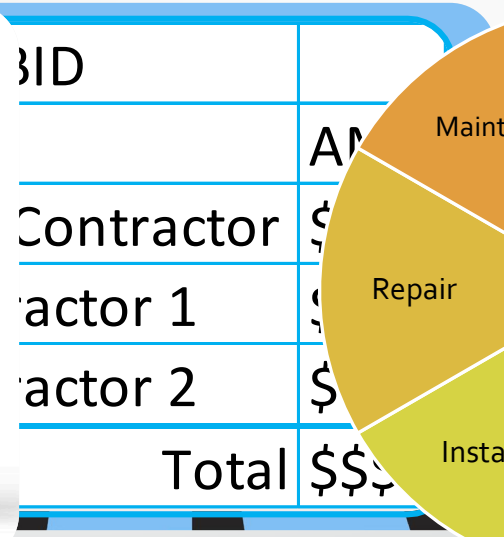


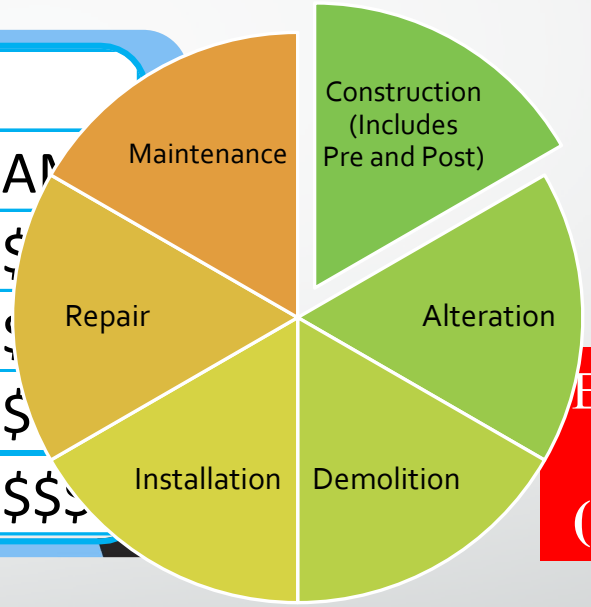

Labor Code 1725.5

# Contractor Responsibilities

***Late <u>Registration</u>:***

- ***$2000.00*** *penalty for a lapse for first time registration*




Beginnin
Fiscal Pe
(Effecti

End of Fiscal Period **(Expiration)**

July 1, 2022

**$2000.00 for a lapse in registration**

June 30, 2023

Labor Code 1725.5

# Thank you for attending!

**General questions or system issues?**

**Labor Commissioner's Office - publicworks@dir.ca.gov**

- System issues? Provide screenshots and contact information for user experiencing the issues
- Identify the system in the subject line.
  - PWCR (Public Works Contractor Registration)
  - eCPR (Electronic Certified Payroll Reporting
  - PWC-100 (Project Registration)

**The work I am engaged in requires prevailing wages, what craft that applies?**

**Office of the Director – Research Unit - statistics@dir.ca.gov**

Request a wage determination. Provide county, bid date, and scope of work

**Is my specific project a public work? The work I am engaged in is innovative and not found in any scope of work provision, am I required to pay prevailing wages?**

**Office of the Director – Legal Unit - pwcoverage@dir.ca.gov**

Request a coverage determination. Provide as much documentation as possible (contract, funding source, lease information, scope of work, etc.)

# LETF Strategic Enforcement of Public Works Construction

**Christy Muraoka**
Labor Enforcement Task Force

California Department of Industrial Relations

State of California
Gavin Newsom
Governor

# AB 140

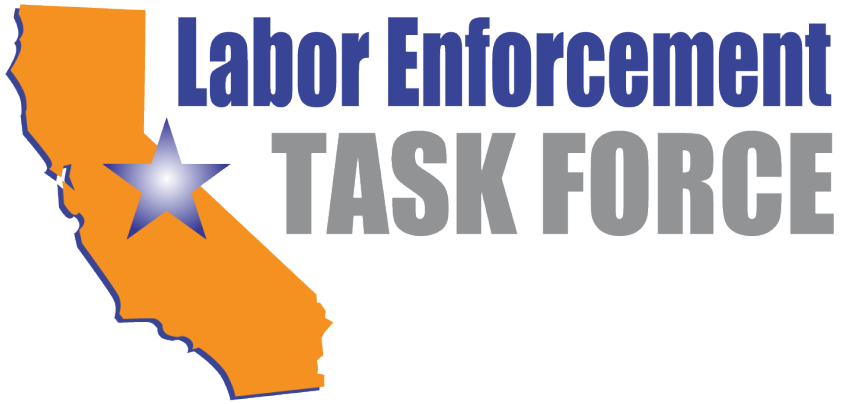
**SEC. 26.** Section 1785 is added to the Labor Code, to read:

**1785.** (a) The director shall establish and maintain a strategic enforcement unit focused on construction, alteration, and repair projects. The unit shall enhance the department's enforcement of this code in construction, alteration, and repair projects, including projects funded pursuant to Section 50675.1.3 of the Health and Safety Code and other publicly funded residential construction projects. The unit shall have primary responsibility for enforcement of this code in construction projects subject to Section 50675.1.3 of the Health and Safety Code. Any funds appropriated to the department for purposes of this section shall be administered and allocated by the director.

(b) The strategic enforcement unit described in subdivision (a) shall provide technical assistance to local public entities related to both of the following:

(1) Best practices for monitoring and enforcing requirements pertaining to construction, alteration, and repair projects paid for in whole or in part out of public funds, including, but not limited to, this chapter.

(2) Outreach and engagement with workers, employers, and state certified apprenticeship programs connected to construction, alteration, and repair projects.




The Labor Enforcement Task Force, under the direction of the Department of Industrial Relations, is a coalition of California State government enforcement agencies that work together and in partnership with local agencies to combat the underground economy. In this joint effort, information and resources are shared to ensure employees are paid properly and have safe work conditions and honest, law-abiding businesses have the opportunity for healthy competition.

# Combatting the Underground Economy

## LETF: The benefits of joint enforcement

- Coordinate across multiple agencies
- Share data, information, and resources
- Ensure employees are paid properly and have safe work conditions
- Provide honest, law-abiding businesses the opportunity for healthy competition
- Minimize business interruption through joint inspection
- Target enforcement on employers violating the law

# Strategic Enforcement of Public Works Projects

Pursuant to Assembly Bill 175 (Chapter 255, 2021), funding was appropriated from the Labor and Workforce Development Fund to support DIR in strategic enforcement focused on construction, alteration, and repair projects, subject to the provisions of Section 1785 of the Labor Code. This funding would provide enhanced strategic enforcement to target employers in the construction industry working on public works projects who are noncompliant with various labor laws.

# LETF Strategic Enforcement Partner Agencies

- Department of Industrial Relations
  - Division of Occupational Safety & Health (Cal/OSHA)
  - Labor Commissioner’s Office (DLSE)

# LETF Strategic Enforcement Partner Agencies cont.

- Employment Development Department (EDD)
  - Main LETF partner for multiple industries
- Contractors State License Board (CSLB)
  - Key partner for construction enforcement
- California Department of Insurance (CDI)
  - Collaboration on insurance fraud cases
- Local District Attorneys
  - Collaboration enables investigation and prosecution of wage theft cases and other labor law violations through the exchange of information and resources.

# LETF and HCD

DIR is currently collaborating with the California Department of Housing and Community Development (HCD) to review their awarded Homekey Round 2 publicly funded housing projects. With the help of HCD's list of awarded projects the LETF can focus efforts on the enforcement of those Public Works construction projects.

Homekey
Bringing California Home

# Background

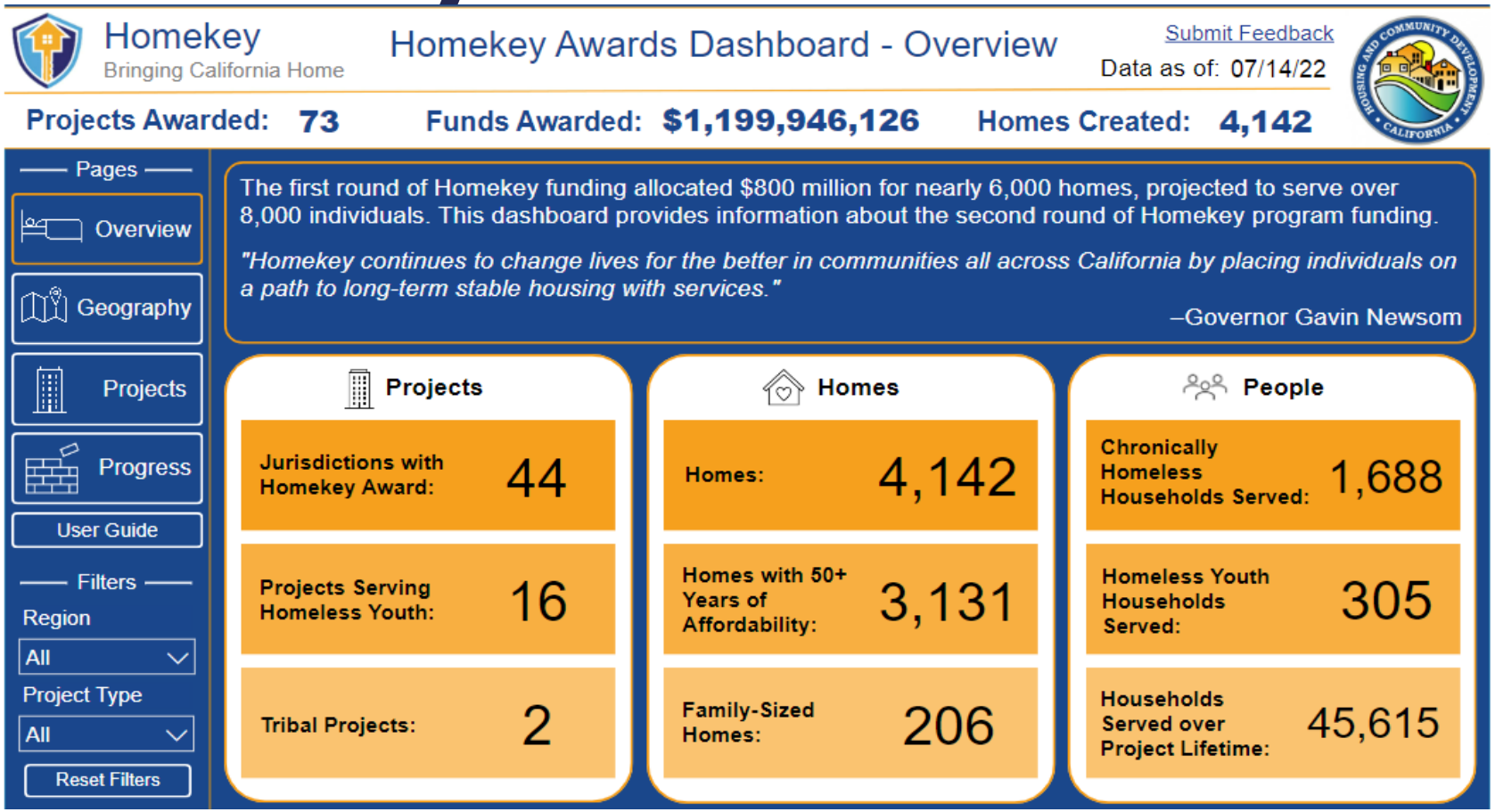
Building on the success of both **Project Roomkey** and the first round of Homekey, Homekey Round 2 continues a statewide effort to sustain and rapidly expand housing for persons experiencing homelessness or at risk of homelessness, and who are, thereby, inherently impacted by COVID-19 and other communicable diseases.

Administered by the California Department of Housing and Community Development (HCD), approximately $1.4 billion (FY 2021-22) in grant funding will be made available to local public entities, including cities, counties, or other local public entities, such as housing authorities or Tribal Entities within California.

# List of Homekey Projects

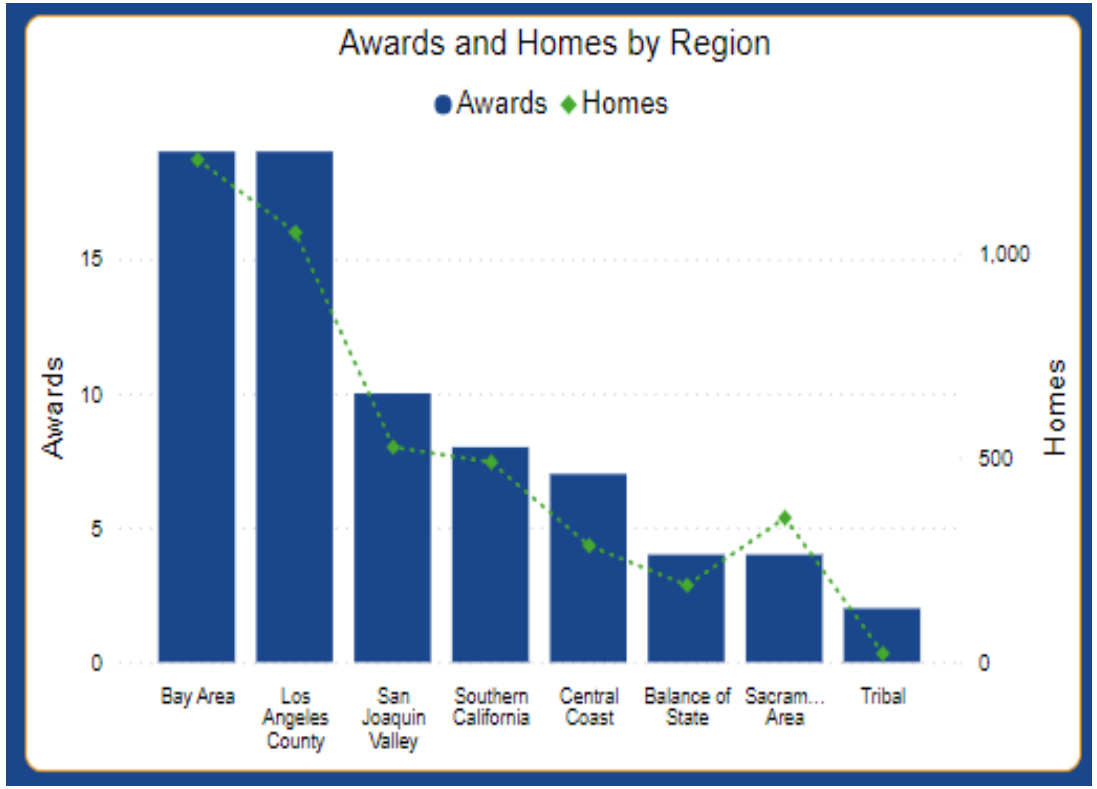
| Eligible Applicant | Project Name | City | Region | Housing Type | Eligible Use | Assisted Units | Total Units | Capital Award | Operating Award | Total Awarded Amount | Award Date |
|---|---|---|---|---|---|---|---|---|---|---|---|
| City of Victorville | Victorville Wellness Center | Victorville | Southern CA | Interim | Modular | 110 | 110 | $23,612,058 | $4,392,000 | $28,004,058 | 12/15/2021 |
| County of San Mateo | Navigation Center | Redwood City | Bay Area | Interim | Modular | 240 | 240 | $46,091,860 | $9,230,400 | $55,322,260 | 12/15/2021 |
| County of San Mateo | Stone Villa Interim Housing | San Mateo | Bay Area | Interim to Permanent | Hotel Acquisition and Rehabilitation | 43 | 43 | $11,432,326 | $2,078,800 | $13,511,126 | 12/15/2021 |
| Housing Authority of the County of Kern | 6th Street Apartments | Bakersfield | San Joaquin Valley | Permanent | New Construction | 39 | 40 | $7,990,000 | $386,946 | $8,376,946 | 12/15/2021 |
| City and County of San Francisco | 1321 Mission | San Francisco | Bay Area | Permanent | Existing Multifamily | 159 | 160 | $46,290,000 | $8,488,000 | $54,778,000 | 12/21/2021 |
| City of Rohnert Park | Homekey Rohnert Park | Rohnert Park | Bay Area | Interim | Modular | 60 | 60 | $11,400,000 | $3,278,400 | $14,678,400 | 12/21/2021 |
| Housing Authority of the City of Sacramento | Vista Nueva | Sacramento | Sacramento Area | Interim and Permanent | Hotel | 116 | 116 | $28,511,662 | $498,688 | $29,010,350 | 12/21/2021 |
| Housing Authority of the County of Kern | Cornerstone | Bakersfield | San Joaquin Valley-Homeless Youth | Interim and Permanent | Adaptive Reuse of Commercial Structure | 32 | 34 | $6,250,452 | $1,521,481 | $7,771,933 | 12/21/2021 |
| City of Healdsburg | L & M Village | Healdsburg | Bay Area | Interim | Hotel | 22 | 22 | $5,720,000 | $1,328,800 | $7,048,800 | 12/21/2021 |
| County of Santa Clara | Bella Vista Inn | Santa Clara | Bay Area | Interim with plan to convert to permanent | Motel Acquisition and Rehabilitation | 64 | 65 | $18,552,114 | $3,591,200 | $22,143,314 | 1/4/2022 |
| Housing Authority of the County of Kern | CityServe Network Housing | Bakersfield | San Joaquin Valley-Homeless Youth | Interim | Modular | 125 | 126 | $25,483,500 | $4,515,996 | $29,999,496 | 1/4/2022 |
| County of Santa Barbara | Hedges House of Hope | Goleta | Central Coast | Interim | Motel Acquisition and Rehabilitation | 22 | 22 | $5,575,957 | $1,419,136 | $6,995,093 | 1/4/2022 |
| Housing Authority of the City of Los Angeles | 5050 W Pico | Los Angeles | Los Angeles County | Permanent | Existing Multifamily Acquisition | 78 | 79 | $20,447,579 | $780,000 | $21,227,579 | 1/18/2022 |
| Housing Authority of the City of Sacramento | Central Sacramento Studios | Sacramento | Sacramento Area | Permanent | Hotel Acquisition and Rehabilitation | 92 | 93 | $23,548,000 | $376,598 | $23,924,598 | 1/18/2022 |
| County of Marin | South Eliseo PSH | Larkspur | Bay Area | Permanent | Skilled Nursing Facility Acquisition and Rehabilitation | 43 | 44 | $12,900,000 | $2,597,200 | $15,497,200 | 2/9/2022 |

# Homekey Round 2 Overview




California Department of Industrial Relations

# Homekey Projects by Region



California Department of Industrial Relations

# LETF Strategic Enforcement-Non Homekey

In addition to the focus on Homekey, LETF is also implementing strategic enforcement of non-Homekey related public works residential job sites. DLSE PW is reviewing all current and new complaints, and leads, to determine if they meet the criteria for joint enforcement operations at active on-site residential construction projects.

# Resources

Complete list of awarded Homekey Round 2 projects

*https://homekey.hcd.ca.gov/sites/default/files/2022-02/Awardee-Funding-List-HK-B6.pdf*

*Frequently Asked Questions regarding Homekey Projects*

https://www.hcd.ca.gov/grants-funding/active-funding/homekey/docs/homekey-frequently-asked-questions.pdf

# DIR- LETF

https://www.dir.ca.gov/letf/letf.html

Hotline: 855-297-5322

Email: LETF@dir.ca.gov

# HOT TOPICS
# Public Works Legal 2022

Housing Presentation Prepared by William A. Snyder and Sotivear Sim
Attorneys for the Labor Commissioner
Division of Labor Standards Enforcement

# Disclaimer

The following presentation is intended to summarize relevant portions of existing law in the Labor Code and California Code of Regulations, but those code sections, as interpreted by the courts, will govern actual enforcement. The information contained in this presentation is a general overview of existing law or regulation. Any opinions expressed are solely those of the author/speaker and are not necessarily the official position of the Department of Industrial Relations (DIR), its Director, or any related public entity. The information in this presentation is not intended as legal advice, and does not guarantee any outcome in specific enforcement or coverage proceedings within the jurisdiction of DIR.

# California's "Affordable Housing" Crisis.

"California has a housing supply and affordability crisis of historic proportions. The consequences of failing to effectively and aggressively confront this crisis are hurting millions of Californians, robbing future generations of the chance to call California home, stifling economic opportunities for workers and businesses, worsening poverty and homelessness, and undermining the state's environmental and climate objectives."

Gov. Code §65589.5 (a)(2)(A).

The “Streamlined Ministerial Approval Process” of Gov. C. §65913.4 imposes a non-public work prevailing wage & “skilled & trained workforce” obligation.

**See: California Dept. of Housing & Community Development’s “Streamlined Ministerial Approval Guidelines,” dated March 30, 2021, at https://www.hcd.ca.gov/policy-research/docs/sb-35-guidelines-update-final.pdf**

Gov. Code §65913.4 (k) (6) makes this law applicable to cities and counties, *including a charter city, a charter county, and a "charter city and county"*.

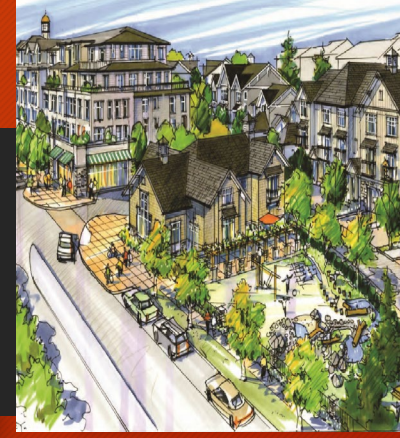
Imposes a *non-public works* "**prevailing wage**" obligation and an obligation to employ a "**skilled and trained workforce**", to specified multi-family housing projects. See: "Streamlined Ministerial Approval Guidelines," dated March 30, 2021, at https://www.hcd.ca.gov/policy-research/docs/sb-35-guidelines-update-final.pdf

- This presentation *does not* cover the process for determining eligibility of development projects, nor the elements requiring differing percentages of "skilled & trained workforce" obligations depending on the craft, but will familiarize you with:
  - The scope of "*Prevailing Wage*" obligation under Gov. Code §65913.4;
  - Potential confusion with established housing exemptions/exclusions; and
  - Potential conflict with alternative workweek schedules.

# DLSE enforcement of Gov. C. § Gov. C. §65913.4 (a) (8) (i).

If the developer certified that the *entirety* of the project is a public work for purposes of Labor Code §1720 et seq., then the "usual" public works laws apply, including the obligation to pay prevailing wages and to employ apprentices.

# If developer certified that "all construction workers employed in the execution of the development" will be paid prevailing wages:



*All of the following apply* to the portions of the development that are not a public work:

1. Developer shall ensure that the PW requirement is in all contracts for the performance of the work;

2. All contractors and subcontractors shall pay all construction workers employed in the execution of the work at least the general prevailing wages, except that apprentices registered in programs approved by DAS may be paid the applicable apprentice prevailing rate;

3. All contractors and subcontractors shall maintain CPRs per Labor C. §1776 & make them available for inspection and copying; and

4. DLSE may issue a CWPA within 18 months after completion *of the development* and if DLSE does so, the contractor, subcontractor, and surety are liable for LDs as set forth in Lab. Code §1742.1.

# Distinctions in DLSE enforcement of Gov. C. §65913.4 from traditional Public Works enforcement.

Maintenance and inspection of CPRs and DLSE enforcement via CWPA *do not apply* if all contractors and subcontractors on the project are covered by a PLA, as defined in Pub. Contract C. §2500 (b)(1).

Despite Lab. C. §1773.1 (c)(2) requirement that employer payments not reduce the obligation to pay the hourly straight or overtime prevailing wage, this requirement *shall not apply* if otherwise provided in a CBA covering the worker.* Also, the requirement to pay at least the PW rate *does not preclude the use of an alternative workweek schedule adopted pursuant to Lab. C. §§ 511 or 514.* Gov. C. §65913.4 (a)(8)(A)(ii)(VI).

*Gov. C. §65913.4 (a)(8)(A)(ii)(VI), unlike Lab. C. §1773.1 (c) (3), *does not require* that the employer payment contribution be “irrevocable unless made in error.”

**See: California Dept. of Housing & Community Development's "Streamlined Ministerial Approval Guidelines," dated March 30, 2021, at https://www.hcd.ca.gov/policy-research/docs/sb-35-guidelines-update-final.pdf**

# SCOPE OF "SKILLED AND TRAINED WORKFORCE" OBLIGATION UNDER GOV. CODE §65913.4 (a)(8)(B)

Certain multi-family housing developments that are not 100% "subsidized* affordable housing" must use a "skilled and trained workforce" (as defined in Pub. Contract C., "Chapter 2.9" (§§ 2600 et seq.)). "Subsidized," as defined in Gov. C. §65913.4, subd. (k) (10), means units that are price or rent restricted such that they are permanently affordable to households meeting the definition of very low and lower income, as defined in Health & Safety Code §§ 50079.5 and 50105.

# What is a “skilled and trained workforce”?

## (Public Contract Code §2601)

A STW meets **ALL** of the following conditions:

- **ALL workers** performing work in an apprenticeable occupation in the building and construction trades are **EITHER**:
  - Skilled Journeypersons OR
  - DAS-Registered Apprentices

- 30% - 60% of **ALL** Skilled Journeypersons must be **graduates of apprenticeship program**.
  - Graduation percentage requirement varies depending on specific craft.
  - Graduation percentage requirement can be met by counting **EITHER**:
    - Number of Skilled Journeypersons employed (head count) OR
    - Number of hours worked by Skilled Journeypersons (hours worked by trade)

  EXCEPT:
  - The graduation percentage requirement does not apply if **less than 10 hours of work** were performed in a calendar month (in a particular craft).
  - The graduation percentage requirement does not apply if BOTH:
    - Subcontractor is **not listed in the bid** as required by Pub. Contract Code §4104; **AND**
    - Subcontract **does not exceed** ½% of total contract.

# What is a "skilled and trained workforce"?

[For Visual Learners]

Graduated DAS-approved apprenticeship program

Graduated DOL-approved apprenticeship program

On-the-job experience = # hrs. required to graduate DAS-approved apprenticeship program

Who is a Skilled Journeyperson (SJP)?

ALL WORKERS =

**Skilled Journeypersons (SJP)** OR DAS-registered apprentices

**30-60% of SJP***

= GRADUATES of apprenticeship program

*% requirement depends on craft

*% requirement met by counting:

→# SJP (headcount) OR

→# hrs. worked by SJP

# Department of Housing & Community Development ("HCD") housing programs.

*Multifamily Housing Program* (Health & Saf. Code, Div. 31, Part 2, Chapt. 37, §§50675 et seq.): To be eligible for a MHP loan, a sponsor "shall" agree to pay prevailing wages with respect to construction assisted with the loan. (Health & Saf. Code §50675.4, subd. (c)(2).)

*Transit-Oriented Development Implementation Program:* Requires that loans for the development of rental housing made through this program be administered consistent with the *Multifamily Housing Program* (i.e., "shall" agree to pay prevailing wages . . . ) (Health & Saf. Code §53562 (b)(3), effective Jan. 1, 2022.)

*Rental Construction Incentive Program* (Health & Saf. Code §50745 et seq.): Establishes that any rental housing development assisted pursuant to this article "shall" be governed by a regulatory agreement that "shall include" a requirement that prevailing wage rates be paid with respect to construction of the rental housing development. (See, Health & Saf. Code §50749, subd. (b); and Ca. Code of Regs., tit. 25, §7802.)

# HCD housing programs – continued.

*Joe Serna Jr. Farmworker Housing Grant Program.* Requires that HCD makes funds available from, and administers loans under, this program "in a manner consistent with the *Multifamily Housing Program.*" (Health & Saf. Code §50517.5 (a) (1) (A) (ii) & (iii), effective Jan. 1, 2022.)

*Veterans and Affordable Housing Bond Act of 2018* (Health & Saf. Code, Part 16, §5400 et seq. together with Mil. & Vet. Code §998.600 et seq.): Establishes that programs funded with bond proceeds shall, when allocating financial support, *give preference to projects that are "public works" . . . and other projects on which all construction workers will be paid at least the general prevailing rate of per diem wages as determined by the Director of Industrial Relations.* (Health & Saf. Code 54009 (emphasis added).)

For links to various HCD Guidelines to these programs and others see: https://www.hcd.ca.gov/grants-funding/docs/admin_memo21-06_stacking_prohibition_repeal.pdf

# Effect of funding conditions on “public works” analysis under Labor Code §1720.

# Labor Code §1720 (c) exempts 5 categories of private development projects as "public work" otherwise defined under subdivision (b).

However, Labor Code §1720 (c) (1) and (c) (5) excludes *from the exemption*:

(1) Private residential projects built on private property . . . [if] *the projects are built pursuant to an agreement with a state agency*, a redevelopment agency, a successor agency to a redevelopment agency when acting in that capacity, or a local public housing authority.

. . .

(5) *[Where] otherwise required by a public funding program* . . .

Keep these exclusions in mind and take them into account where the funding conditions of the various HCD programs apply to require the payment of prevailing wages.

# Where preemption of HUD-funded work on Public Housing Authority owned or leased property applies, HUD requires:

"Any solicitation of bids or proposals issued by the PHA and any contract executed by the PHA for development, maintenance, and modernization of the project *shall* include a statement that any (state) prevailing wage rate . . . is inapplicable to the contract and shall not be enforced against the contractor or any subcontractor . . ."

(29 C.F.R. §965.101 (b). Emphasis added.)

# Residential vs. Commercial projects & rates.

Contractors must be familiar with applicable PW regulations
(Title 8, Cal. Code of Regs. §16001)

# Title 8, Calif. Code of Regs., §16001, subds. (d) & (e) define "residential" and "commercial" projects as follows:

(d) **Residential Projects**. Residential projects consisting of *single family homes and apartments up to and including four stories* are subject to payment of [PWs] when paid for in whole or in part out of public funds, including federally-funded or assisted residential projects controlled or carried out by an awarding body. . . .

(e) **Commercial Projects**. All non-residential construction projects including new work, additions, alterations, reconstruction and repairs. *Includes residential projects over four stories.*

[Emphasis added.]

# Definitions summarized in recent Residential Prevailing Wage Determinations

EXAMPLE:

> "This residential determination applies only to the residential portion of the project meeting this definition. Construction of any structures or ancillary facilities on the project that does not meet this definition requires the payment of the general commercial prevailing wage rates. The general *commercial prevailing wage rates apply to all residential projects consisting of buildings of five or more stories*. The residential prevailing wage rates apply to all residential projects consisting of buildings *up to and including four stories*." (Emphasis added.)

(RESIDENTIAL DETERMINATION: R-23-31-2-2021-1.)

# LINKS TO CALIFORNIA DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT PROGRAM GUIDELINES

Multifamily Housing Program Final Guidelines (ca.gov) at p. 23, Section 7316, para. (e) - "Construction Requirements“

INFILL INFRASTRUCTURE GRANT GUIDELINES at p. 38, Section 314, "Prevailing Wages“

Transit-Oriented Development Guidelines - 4.30.2020 (ca.gov) at p. 30, para. E

Permanent Local Housing Allocation Program Non-Entitlement Local Government Competitive Notice of Funding Availability, Amended Nov. 6, 2020, at p. 12, para. D, "State Prevailing Wages“

No Place Like Home Program Round 3 Guidelines (ca.gov), at p. 42, Section 213; and p. 60, Section 304

# LINKS TO CALIFORNIA DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT PROGRAM GUIDELINES

Housing for a Healthy California Final Guidelines- Amended, at p. 30, Section 119, para. (a) Federal Overlays (includes required compliance with state prevailing wage laws).

Affordable Housing and Sustainable Communities Program, Round 5 Guidelines, amended 2/24/2021, at p. 53, Section 113 - "Prevailing Wages"

Home Investment Partnerships Program, Notice of Funding Availability (ca.gov), at p. 44, Section VII, para. A "Federal Overlays"; and p. 46

Updated Streamlined Ministerial Approval Process (ca.gov) at p.12, para. 4 (A); p. 21, para. d (1) (A) & d (1) (B); and pgs. 24-28, Section 403 "Labor Provisions"

Homekey Program Guidelines

# Assembly Bill 1023

Submission of Electronic Certified Payroll Records (eCPR)

# AB 1023

Assembly Bill 1023 (AB 1023) became **effective on January 1, 2022**.

- AB 1023 amends Labor Code §1771.4 to clarify the requirement that contractors and subcontractors on public works projects furnish electronic certified payroll records (eCPRs) to the Labor Commissioner and create new penalties for a contractor's failure to do so.

- Existing law required eCPRs to be submitted on at least a monthly basis since 2014 (SB 854). The Labor Commissioner has required contractors to report certified payroll information online using DIR's electronic certified payroll reporting system.

- A few projects are exempt from the requirement to submit eCPRs to the DIR:
  1) "Small projects" which are projects that do not exceed $25,000 for construction, alteration, installation, demolition or repair, or $15,000 for maintenance work.
  2) Projects covered by a qualifying project labor agreement.
  3) Projects monitored by a legacy Labor Compliance Program (Caltrans, City of Los Angeles, Los Angeles Unified School District, and County of Sacramento).

# AB 1023

- **Submission of eCPRs is a separate and distinct requirement** from other reporting obligations of contractors and subcontractors. For example, a contractor must provide certified copies of documents within 10 days of the Labor Commissioner's written request. (Labor Code §1776(d).) Conversely, a contractor who provides payroll records in response to a written request from the Labor Commissioner is still required to submit eCPRs on a monthly basis. (See Office of the Labor Commissioner Public Works Manual, §3.1.6.)

- AB 1023 makes a contractor or subcontractor who fails to furnish eCPRs at least monthly liable for **penalties of $100 per day**, up to **$5,000 per project**. (Labor Code §1771.4(a)(3)(B).) Penalties only accrue against the actual contractor or subcontractor that failed to furnish eCPRs. These penalties are enforced through the CWPA process. (Labor Code §1741.)

- AB 1023 **clarifies the term "monthly"** as being "at least once every 30 days while work is being performed on the project and within 30 days after the final day of work performed on the project." (Labor Code §1771.4(a)(3)(A)(i).)