

# SixTen and Associates

## MANDATE REIMBURSEMENT SERVICES

PROGRAM: 868/02 PREVAILING WAGE RATE(K-14)

PWR 1.9

### LEGAL REQUIREMENTS

- 1) Pursuant to Labor Code Section 1773 and Title 8, California Code of Regulations, Section 16202, to obtain the applicable general prevailing rate of per diem wages from the Director of Industrial Relations before awarding a contract for public works.
- 2) Pursuant to Title 8, California Code of Regulations, Section 16204, to ensure that the correct prevailing wage rates have been determined by the Director of Industrial Relations.
- 3) Pursuant to Title 8, California Code of Regulations Section 16001, to request from the Director of Industrial Relations a coverage determination regarding a specific project or type of work to be performed.
- 4) Pursuant to Title 8, California Code of Regulations, Section 16302, to file a petition for review of a determination of the Director of Industrial Relations of any rate or rates.
- 5) Pursuant to Labor Code Section 1773.4 and Title 8, California Code of Regulations Section 16002.5, to appeal an incorrect determination made by the Director of Industrial Relations.
- 6) Pursuant to Labor Code Section 1773.2, to include a statement of prevailing rate of per diem wages in all calls and advertisements for bids, in the public works contract itself, and to post the statement at all job sites. In lieu of those requirements, the district may include a statement in the call for bids and contract a statement to the effect that copies of the prevailing rate of wages are on file in its principal office.
- 7) Pursuant to Labor Code Section 1777.1 and Title 8, California Code of Regulations, Section 16800 through 16802, to maintain records of ineligible contractors and subcontractors and to refuse to grant them public works projects of the district.
- 8) Pursuant to Labor Code Section 1777.3, to send copies of all awards to the Division of Apprenticeship Standards and notify the Division of any discrepancies.
- 9) Pursuant to Labor Code Section 1776, when necessary or requested by the Director of Industrial Relations, to inspect and audit payroll records of contractors and subcontractors working on district public works projects.
- 10) Pursuant to Labor Code Section 1776 and Title 8, California Code of Regulations, Section 16402, when requested by appropriate parties, to obtain and provide copies of the payroll records of the contractors and subcontractors working on district public works projects. The records provided are required to be marked or obliterated to prevent disclosure of an individual's name, address and social security number.
- 11) Pursuant to Labor Code Section 1771.5 and Title 8, California Code of Regulations, Sections 16425 through 16439, to comply with all of the requirements of a Labor Compliance Program, when initiated and enforced by the district. These requirements include:
  - (a) All bid invitations and public works contracts shall contain appropriate language concerning the requirements of the prevailing wage laws;
  - (b) A prejob conference shall be conducted with the contractor and the subcontractors to discuss federal and state labor requirements applicable to the contract;
  - (c) Project contractors and subcontractors shall maintain and furnish, at a designated

- time, a certified copy of each weekly payroll containing a statement of compliance signed under penalty of perjury
- (d) The district shall review, and, if appropriate, audit payroll records to verify compliance with prevailing wage laws;
  - (e) The district shall withhold contract payments when payroll records are delinquent or inadequate; and
  - (f) The district shall withhold contract payments equal to the amount of underpayments and applicable penalties when, after investigation, it is established that underpayment has occurred.
- 12) Pursuant to Labor Code Section 1771.6 and Title 8, California Code of Regulations, Section 17220, to provide contractors and subcontractors, and bonding companies and sureties with Notices of Withholding of Contract Payments when minimum wage law violations are discovered by the district. The notice shall be in writing and include the following information:
- (a) A description of the nature of the violation and basis for the notice.
  - (b) The amount of wages, penalties and forfeitures due, including a specification of amounts that have been or will be withheld from available contract payments, as well as all additional amounts that the enforcing agency has determined are due, including the amount of any liquidated damages that potentially may be awarded under Labor Code section 1742.1.
  - (c) The name and address of the office to whom a Request for Review may be sent.
  - (d) Information on the procedures for obtaining review of an Assessment or a Notice of Withholding of Contract Payments.
  - (e) Notice of Opportunity to request a settlement meeting under Section 17221.
  - (f) A statement appearing in bold or another type of face, that makes it stand out from other text, to the effect that failure to submit a timely request for review will result in a final order binding on the contractor and subcontractor, and on the bonding company.
- 13) Pursuant to Labor Code Section 1726, to report any suspected violations of the prevailing wage laws to the Labor Commissioner.
- 14) Pursuant to Labor Code Section 1726, to withhold contract payments for underpaid wages and for penalties when, through the district's own investigation, the district determines a violation of prevailing wages has occurred.
- 15) Pursuant to Labor Code Section 1727, to withhold amounts necessary to satisfy Civil Wage and Penalty Assessments issued by the Labor Commissioner.
- 16) Pursuant to Labor Code Section 1727, to retain amounts withheld to satisfy a Civil Wage and Penalty Assessment until receiving a final order no longer subject to judicial review.
- 17) Pursuant to Labor Code Section 1742, after July 1, 2001, and Title 8, California Code of Regulations, Section 17220, to comply with all due process requirements for the benefit of contractors and subcontractors when amounts are withheld pursuant to a Civil Wage and Penalty Assessment or a Notice of Withholding of Contract Payments, including the providing of proper and timely notices, allowing them to review evidence relied upon, appearance and participation at hearings and the appeals therefrom.
- 18) Pursuant to Labor Code Section 1742, after July 1, 2001, to respond to petitions for writs of mandates filed by contractors and subcontractors seeking review of orders of the Labor Commissioner, including the retention of counsel to file timely responses, participating in pre-trial discovery matters, the trial of the cause, pre-trial and post-trial

- briefing, and the preparation of findings and judgment.
- 19) Pursuant to Labor Code Section 1742.1 and Title 8, California Code of Regulations, Section 16413, to grant and to participate in settlement meetings requested by contractors or subcontractor in an attempt to settle any disputed issue before formal hearing procedures.
  - 20) Pursuant to Labor Code Section 1771.2, a joint labor-management committee may bring an action against an employer who fails to pay prevailing wages. As a necessary party, the school district would be required to appear and participate in these legal proceedings.
  - 21) Pursuant to Labor Code Section 1776, to furnish copies of payroll records of a contractor or subcontractor to a joint labor management committee obliterated only to prevent disclosure of social security numbers.
  - 22) (a) Pursuant to Labor Code Section 1720.2, the construction work is performed according to plans, specifications or criteria furnished by the district and where the district enters into a lease, as lessee, of the completed project during or upon completion of the construction;
  - (b) Pursuant to Labor Code Section 1720.3, hauling refuse from a public works site to an outside location;
  - (c) Pursuant to Labor Code Section 1720, the work performed during the design and preconstruction phases of construction including, but not limited to, inspection and land surveying work;
  - (d) Pursuant to Title 8, California Code of Regulations, Section 16001, the work is for maintenance, including landscape maintenance;
  - (e) Pursuant to Labor Code Section 1720, the work is for installation works;
  - (f) Pursuant to Title 8, California Code of Regulations, Section 16001, the work is for field surveying work traditionally covered by collective bargaining agreements when the work is integral to the specific public works project; and
  - (g) Pursuant to Title 8, California Code of Regulations, Section 16001, the work is for residential and commercial projects when the public work is for student or faculty housing.