

TO: MICHAEL S. LEBRUN *MSL*
GENERAL MANAGER

FROM: PETER V. SEVCIK, P.E.
DIRECTOR OF ENGINEERING
& OPERATIONS

DATE: JANUARY 8, 2015

AGENDA ITEM
D-3
JANUARY 14, 2015

**SUPPLEMENTAL WATER PROJECT PHASE 1
LABOR COMPLIANCE PROGRAM**

ITEM

Adopt Labor Compliance Program for Supplemental Water Project Phase 1 [RECOMMEND BY MOTION AND ROLL CALL VOTE APPROVE RESOLUTION ADOPTING LABOR COMPLIANCE PROGRAM FOR SUPPLEMENTAL WATER PROJECT PHASE 1].

BACKGROUND

A portion of the overall Supplemental Water Project Phase 1 funding includes State of California Proposition 84 bond revenues. As part of the Proposition 84 funding requirements, your Board adopted a Labor Compliance Program (LCP) to further formalize the practices that the District had been following to meet the labor compliance requirements applicable to the project. However, the LCP was not submitted to the California Department of Industrial Relations for approval. Adoption of the resolution attached to this Board letter will authorize staff to proceed with obtaining approval of the LCP from the California Department of Industrial Relations.

FISCAL IMPACT

Cost for labor compliance monitoring activities is already included in the MNS Engineers, Inc. construction management contract previously approved by your Board.

STRATEGIC PLAN

Goal 1 – WATER SUPPLY – Actively plan to provide reliable water supply of sufficient quality and quantity to serve both current customers and those in the long-term future.

RECOMMENDATION

Staff recommends that the Board, by motion and roll call vote, approve Resolution 2015-XXXX SWP Phase 1 Labor Compliance Program, to adopt a Labor Compliance Program for Supplemental Water Project Phase 1.

ATTACHMENTS

- A. Resolution 2015-XXXX SWP Phase 1 Labor Compliance Program
- B. Nipomo CSD Labor Compliance Program Application

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ATTACHMENT A

**NIPOMO COMMUNITY SERVICES DISTRICT
RESOLUTION NO. 2015-XXXX**

**A RESOLUTION OF THE BOARD OF DIRECTORS OF THE NIPOMO COMMUNITY
SERVICES DISTRICT ADOPTING AND IMPLEMENTING LABOR COMPLIANCE
PROVISIONS ON CERTAIN PUBLIC WORKS CONTRACTS**

WHEREAS, California Labor Code Section 1770, et seq., requires contractors on public works projects pay their workers based on the prevailing wage rates which are established and issued by the Department of Industrial Relations, Division of Labor Statistics and Research and;

WHEREAS, California Labor Code Section 1776 requires contractors to keep accurate payroll records of trades workers on all public works projects and to submit copies of certified payroll records upon request and,

WHEREAS, California Labor Code Section 1777.5 requires contractors to employ registered apprentices on public works projects and,

WHEREAS, the provisions of the California Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006 (Proposition 84) require the establishment of a Labor Compliance Program (LCP) to monitor the prevailing wage and apprenticeship requirements on any project using Proposition 84 funding; and

WHEREAS, Nipomo Community Services District has applied for Proposition 84 funding;

NOW, THEREFORE, BE IT RESOLVED, that the Board of Directors for Nipomo Community Services District, having reviewed the item hereby adopts the District's Labor Compliance Plan and directs District staff to proceed with obtaining approval of said Program from the Department of Industrial Relations;

On the motion of _____, seconded by _____, and on the following roll call vote, to wit:

AYES:

NOES:

ABSENT:

CONFLICTS:

The foregoing resolution of the Board of Directors of Nipomo Community Services District was duly and regularly introduced, passed and adopted at a regular meeting of the Board of Directors on the ____ day of _____, 2015.

NIPOMO COMMUNITY SERVICES DISTRICT

RESOLUTION NO. 2015-XXXX

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE NIPOMO COMMUNITY SERVICES DISTRICT ADOPTING AND IMPLEMENTING LABOR COMPLIANCE PROVISIONS ON CERTAIN PUBLIC WORKS CONTRACTS

CRAIG ARMSTRONG

President, Board of Directors

ATTEST:

APPROVED AS TO FORM:

MICHAEL S. LEBRUN

General Manager and
Secretary to the Board

MICHAEL W. SEITZ

District Legal Counsel

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ATTACHMENT B

**Application to Director for Approval of Awarding Body's Labor Compliance Program
for Proposition 84 funded projects only
(8 CCR §16425)**

Awarding Body Seeking Approval:

**Nipomo Community Services District
148 South Wilson Street
Nipomo, CA 93455**

Awarding Body's Contact Person:

**Michael S. LeBrun, General Manager
mlebrun@ncsd.ca.gov
805-929-1133**

- A. Identify the individuals who will be enforcing the Labor Compliance Program (LCP).
(Note: If using outside consultants or an approved third party contract provider, identify the awarding body personnel who will monitor or supervise the outside work as well as the individuals and affiliations of the individuals who will perform the enforcement work.)

Peter V. Sevcik, Director of Engineering and Operations

Experience/training on public works/labor compliance issues (Please provide specific dates, details and examples of public works prevailing wage rate enforcement activities, including whether such experience involve federal, state, or local law. In addition, please include private sector experience on behalf of unions or contractors or on a joint labor management committee pursuant to the federal Labor Management Cooperation Act of 1978 (29 U.S.C. section 175a). Furthermore, please include participation in any public works enforcement training provided by the Division of Labor Standards Enforcement (DLSE)):

Peter Sevcik is a professional engineer with over 25 years of experience working in the public works sector and is knowledgeable with government policies and procedures. Mr. Sevcik joined the District in September 2007 as District Engineer and has served in the capacity of Director of Engineering and Operations since February 2012. Mr. Sevcik manages the day to day engineering and operations relating to running the District's water and wastewater facilities. He has managed numerous projects involving prevailing wage and understands the state's prevailing wage requirements.

LCP duties and responsibilities to be performed including percentage of time to be devoted to LCP work:

The Agency shall be responsible for the day to day operation of the LCP. Additionally decisions relating to the withholding of funds, imposition, reduction or waiver of penalties shall rest exclusively with the Agency. The Agency shall employ the services of CCMI for Labor Compliance Consulting work in the administering of its LCP obligations and for the purpose of complying with LCP requirements on project funded by Proposition 84.

**Contractor Compliance and Monitoring Inc.
635 Mariners Island Blvd, Suite 200
San Mateo, CA 94404**

650-522-4403 fax: 650-522-4402

Deborah Wilder, President

Yvonne Nickles Sr. Analyst; Lynda Dubas, Analyst

Experience/training on public works/labor compliance issues (Please provide specific dates, details and examples of public works prevailing wage rate enforcement activities, including whether such experience involve federal, state, or local law. In addition, please include private sector experience on behalf of unions or contractors or on a joint labor management committee pursuant to the federal Labor Management Cooperation Act of 1978 (29 U.S.C. section 175a). Furthermore, please include participation in any public works enforcement training provided by the Division of Labor Standards Enforcement (DLSE)):

Contractor Compliance and Monitoring Inc. (CCMI) was approved by the California Department of Industrial Relations as a Third Party Labor Compliance Program in March 2003. CCMI personnel have a decade of experience in providing prevailing wage compliance, payroll review, apprenticeship compliance and training to contractors and public agencies. CCMI works on projects involving California prevailing wage, Federal Prevailing Wage, ARRA funded projects as well as special local public works requirements.. CCMI has provided services to over 100 public agencies since its inception in 2002.

Deborah Wilder, CCMI's president and a licensed attorney, has been writing Labor Compliance Programs since the early 1990s, is a published author on California and Federal Prevailing Wages and is a nationally recognized speaker on the subject.

Yvonne Nickles has been with CCMI since its 2005 and is both the Northern California Operations Manager and a Senior Analyst. She is well versed in all aspect of LCP requirements. She previously worked for the City of Dublin's Public Works Department.

Lynda Dubas has spent decades in the private construction sector and is fully familiar with prevailing wage and labor compliance requirements. She has been with CCMI since 2011.

LCP duties and responsibilities to be performed including percentage of time to be devoted to LCP work:

CCMI will provide assistance to the Agency on all aspects of Proposition 84 LCP requirements. CCMI has no authority to control whether or not funds are released nor the authority to withhold funds on any project. That responsibility remains with the Agency. CCMI will be under the direct day to day control of the Agency and its LCP Officer.

B. State the average number of public work projects the awarding body annually administers:

The District administers 2 to 4 public works projects annually.

C. State whether the proposed LCP is a joint or cooperative venture among awarding bodies; and, if so, how the resources and expanded responsibilities of the LCP compare to the awarding bodies involved:

The LCP will be administered by the Agency and will be implemented by the Agency ONLY for those projects funded by Proposition 84.

Describe the awarding body's record of taking cognizance of Labor Code violations in the preceding five years, including any withholding of funds from public works contractors pursuant to LC 1726.

The Agency routinely requires the collection and review of certified payrolls on its projects. The Agency is small and has only 2 to 4 projects each year. In the past five years, Agency has not been issued a Notice to Withhold or Civil Wage and Penalty Assessment by the DIR or any prevailing wage investigation of which we are aware.

- E. Identify the attorney or law firm available to provide legal support for the LCP, including handling of the LCP's responsibilities during the administrative review process set forth in Labor Code Section 1771.6.

**Kevin Wang
Best Best & Krieger LLP
500 Capitol Mall, Suite 1700, Sacramento, California 95814
916.325.4000
916.325.4010 Facsimile**

- F. Identify the method by which the LCP will notify the Labor Commissioner of willful violations as defined in Labor Code Section 1777.1(d):

In accordance with the current requirement to provide a Request for Forfeitures to the Labor Commissioners when wages or penalties on a project exceed \$1,000, that report also provides a provision for recommendation of debarment of contractors who have willfully violated the provisions of the Labor Code. The Agency intends to use this format for such notification.

- G. Indicate whether the Awarding Body has established its own Labor Compliance Program in accordance with the requirements of Labor Code Section 1771.5(b) and subchapter 4 of chapter 8 of Title 8 of California Code of Regulations or has contracted with a third party that has been approved by the Director to operate a Labor Compliance Program in accordance with the requirements of Labor Code Section 1771.5(b) and subchapter 4 of chapter 8 of Title 8 of California Code of Regulations. If the Awarding Body has contracted with one or more persons or entities to operate all or any part of the Awarding Body's Labor Compliance Program, please identify (name, address, telephone, and principal contact) all of those persons or entities.

The Agency has applied for Proposition 84 bond funds, has received such funds and is under construction. CCMI has been retained and will continue to provide advice and assistance throughout this project for full LCP compliance as mandated by the provisions of the Labor Code and Proposition 84.

- H. Indicate whether the Awarding Body intends to enforce labor compliance on all of its public works projects (*i.e.*, not limited to projects that are funded by bonds or other statutes that require the Awarding Body to have an LCP as a condition of funding). If not, please indicate the kinds of projects on which you intend to enforce labor compliance and whether you are required to have a labor compliance program as a condition for obtaining funding for the project or projects.

The Agency intends to enforce its LCP only on those projects funded by Proposition 84.

- I. Attach a copy of the Awarding Body's resolution adopting the LCP and, if applicable, any other resolution approving any contracts with persons or entities identified in G above.

Resolution is attached.

- J. Attach the proposed manual outlining the responsibilities and procedures of the LCP.

The DIR has already reviewed and approved CCMI (Contractor Compliance and Monitoring Inc.) several times before and has reviewed its administrative manual.

Michael S. LeBrun, General Manager
Nipomo Community Services District

Date Signed

Mail two copies of this form and attachments to:

**OFFICE OF THE DIRECTOR
DEPARTMENT OF INDUSTRIAL RELATIONS
1515 CLAY ST., 17th FLOOR
OAKLAND, CA 94612
ATTENTION: EXECUTIVE ASSISTANT TO THE DIRECTOR**