AP 6345  CONTRACTS – PROFESSIONAL SERVICES

References:

Public Contract Code Section 6106;
Government Code Section 4526

Limits

The District shall enter into contracts for professional services (typically design and engineering services) as necessary to the efficient operation of the District in accordance with Board Policies, state laws, and other pertinent regulations, with limits as follows:

- **Written proposals (typically, $0 - $30,000):** The District shall solicit written proposals from at least three independent vendors and the Chief Business Officer may sign contract.
- **Formal proposals (typically, more than $30,000):** The District shall solicit formal competitive proposals as described below.

Procedure

- **Requests for Proposals (RFPs)**
  Requests for proposals shall include a definite, complete statement of what is required and, insofar as practical, shall include pertinent details of scope, duration, and cost.

- **Notice of Publication of Requests for Proposals**
  The District shall publish at least once a week for two weeks in a newspaper of general circulation circulated within the District or if there is no such paper, then in some newspaper of general circulation, circulated in the county, and may post the information on the District’s web site or through an electronic portal, a notice calling for proposals, stating the services to be furnished and the time and place when proposals are due.

RFPs shall be prepared and maintained by the Chief Business Officer or designee. All applicable statutory provisions and Board Policies shall be observed in preparation of the RFPs.

The Chief Business Officer or designee shall be responsible for insuring that the RFPs are sufficiently broad to encourage and promote open competition.
• **Awarding of Purchase Orders and Contracts**
  
The awarding of purchase orders and contracts for professional services shall be subject to the following conditions:
  
  o *Any and all proposals may be rejected by the District for any reason.*
  
  o *All proposals shall be screened by a pre-determined set of unbiased criteria.*
  
  o *The District may interview a short list of firms from among all proposers.*
  
  o *Purchase order and contract award recommendations to the Board of Trustees shall identify the short-listed firms and recommended finalist.*

**Office of Primary Responsibility:**  College Operations

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**NOTE:** The underlined language is recommended by College Operations. The Policy and Procedure Task Force approved this procedure on October 15, 2008.

**Date Approved:**

(This is a new procedure recommended by the College of Marin’s College Operations Department)
CALIFORNIA CODES EDUCATION CODE SECTIONS 81641-81656

81641. For the purpose of securing bids or proposals the community college board shall publish at least once a week for two weeks in some newspaper of general circulation published in the district, or if there is no such paper, then in some newspaper of general circulation, circulated in the county a notice calling for bids or proposals, stating the work to be done or materials or supplies to be furnished and the time when and the place where bids or proposals will be opened. Whether or not bids or proposals are opened exactly at the time fixed in the public notice for opening bids or proposals, a bid or proposal shall not be received after that time.

81644. Continuing contracts for work to be done, services to be performed, or for apparatus or equipment to be furnished, sold, built, installed, or repaired for the district, or for materials or supplies to be furnished or sold to the district may be made with an accepted vendor as follows: for work or services, or for apparatus or equipment, not to exceed five years; for materials or supplies, not to exceed three years.

81645. The governing board of any community college district may contract with a party who has submitted one of the three lowest responsible competitive proposals or competitive bids for the acquisition, procurement, or maintenance of electronic data processing systems and equipment, electronic telecommunications equipment, supporting software, and related materials, goods, and services, in accordance with procedures and criteria established by the governing board.

81645.5. In addition to utilizing the procedures specified in Article 9 (commencing with Section 81450) of Chapter 2, any community college district may, by direct sale or otherwise, sell to a purchaser any electronic data-processing equipment or other major items of equipment owned by, or to be owned by, the district, if the purchaser agrees to lease the equipment back to the district for use by the district following the sale.

The approval by the governing board of the district of the sale and leaseback shall be given only if the governing board finds, by resolution, that the equipment is data-processing equipment or another major item of equipment within the meaning of this section and that the sale and leaseback is the most economical means for providing electronic data-processing equipment or other major items of equipment to the district.

81651. The governing board of any community college district may purchase supplementary textbooks, library books, and educational films, audiovisual materials, test materials, workbooks, instructional computer software packages, or periodicals in any amount needed for the operation of the schools of the district.
81653. The governing board of any community college district may purchase from the federal government or any agency thereof any surplus property, as defined in the Surplus Property Act of 1944, in any amount needed for the operation of the schools of the district without taking estimates or advertising for bids.

81655. Wherever in this code the power to contract is invested in the governing board of the community college district or any member thereof, such power may by a majority vote of the board be delegated to its district superintendent, or to such persons as he may designate, or if there be no district superintendent then to such other officer or employee of the district as the board may designate. Such delegation of power may be limited as to time, money or subject matter or may be a blanket authorization in advance of its exercise, all as the governing board may direct; provided, however, that no contract made pursuant to such delegation and authorization shall be valid or constitute an enforceable obligation against the district unless and until the same shall have been approved or ratified by the governing board, said approval or ratification to be evidenced by a motion of said board duly passed and adopted. In the event of malfeasance in office, the district official invested by the governing board with such power of contract shall be personally liable to the district employing him for any and all moneys of the district paid out as a result of such malfeasance.

81656. The governing board by majority vote may adopt a rule, delegating to any officer or employee of the district as the board may designate, the authority to purchase supplies, materials, apparatus, equipment, and services. No such rule shall authorize any officer or employee to make any purchases involving an expenditure by the district in excess of the amount specified by Section 20651 of the Public Contract Code. The rule shall prescribe the limits of the delegation as to time, money, and subject matter. All transactions entered into by the officer or employee shall be reviewed by the governing board every 60 days.

In the event of malfeasance in office, the community college district officer or employee invested by the governing board with the power to contract shall be personally liable for any and all moneys of the district paid out as a result of the malfeasance.

CALIFORNIA CODES PUBLIC CONTRACT CODE SECTIONS 20112

20112. For the purpose of securing bids the governing board of a school district shall publish at least once a week for two weeks in some newspaper of general circulation published in the district, or if there is no such paper, then in some newspaper of general circulation, circulated in the county, and may post on the district's Web site or through an electronic portal, a notice calling for bids, stating the work to be done or materials or supplies to be furnished and the time when and the place and the Web site where bids will be opened. Whether or not bids are opened exactly at the time fixed in
the public notice for opening bids, a bid shall not be received after that time. The governing board of the district may accept a bid that was submitted either electronically or on paper.

20650. The provisions of this article shall apply to contracts by community college districts as provided for in Part 49 (commencing with Section 81000) of the Education Code.

20651. (a) The governing board of any community college district shall let any contracts involving an expenditure of more than fifty thousand dollars ($50,000) for any of the following:
   (1) The purchase of equipment, materials, or supplies to be furnished, sold, or leased to the district.
   (2) Services, except construction services.
   (3) Repairs, including maintenance as defined in Section 20656, that are not a public project as defined in subdivision (c) of Section 22002.

The contract shall be let to the lowest responsible bidder who shall give security as the board requires, or else reject all bids.

(b) The governing board shall let any contract for a public project, as defined in subdivision (c) of Section 22002, involving an expenditure of fifteen thousand dollars ($15,000) or more to the lowest responsible bidder who shall give security as the board requires, or else reject all bids. All bids for construction work shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:
   (1) Cash.
   (2) A cashier's check made payable to the community college district.
   (3) A certified check made payable to the community college district.
   (4) A bidder's bond executed by an admitted surety insurer, made payable to the community college district.

Upon an award to the lowest bidder, the security of an unsuccessful bidder shall be returned in a reasonable period of time, but in no event shall that security be held by the district beyond 60 days from the time the award is made.

(c) This section applies to all equipment, materials, or supplies, whether patented or otherwise. This section shall not apply to professional services or advice, insurance services, or any other purchase or service otherwise exempt from this section, or to any works done by day labor or by force account pursuant to Section 20655.

(d) Commencing January 1, 1997, the Board of Governors of the California Community Colleges shall annually adjust the dollar amounts specified in subdivision (a) to reflect the percentage change in the annual average value of the Implicit Price Deflator for State and Local Government Purchases of Goods and Services for the United States, as published by the United States Department of Commerce for the 12-month period ending in the prior fiscal year. The annual adjustments shall be rounded to the nearest one hundred dollars ($100).

20651.5. (a) The governing board of any community college district may require each prospective bidder for a contract, as described under Section 20651, to complete and submit to the district a
standardized questionnaire and financial statement in a form specified by the district, including a complete statement of the prospective bidder's financial ability and experience in performing public works. The questionnaire and financial statement shall be verified under oath by the bidder in the manner in which civil pleadings in civil actions are verified. The questionnaire responses of prospective bidders and their financial statements shall not be deemed public records and shall not be open to public inspection.

(b) Any community college district requiring prospective bidders to complete and submit questionnaires and financial statements, as described in subdivision (a), shall adopt and apply a uniform system of rating bidders on the basis of the completed questionnaires and financial statements, in order to determine the size of the contracts upon which each bidder shall be deemed financially qualified to bid. The prequalification of a prospective bidder shall neither limit nor preclude a district's subsequent consideration of a prequalified bidder's responsibility on factors other than the prospective bidder's financial qualifications.

(c) Each prospective bidder on any contract described under Section 20651 that is subject to this section shall be furnished, by the community college district letting the contract, with a standardized proposal form that, when completed and executed, shall be submitted as his or her bid. Bids not presented on the forms so furnished shall be deemed nonresponsive and shall be rejected. A proposal form shall not be accepted from any person who, or other entity which, is required to submit a completed questionnaire and financial statement for prequalification pursuant to subdivision (a), but who or which has not done so at least five days prior to the date fixed for the public opening of sealed bids and has not been prequalified, pursuant to subdivision (b), at least one day prior to that date.

20652. Notwithstanding any other provisions of Sections 81640 to 81654, inclusive, of the Education Code, or of Sections 20651 to 20659, inclusive, of this code, the governing board of any community college district without advertising for bids, and when that board has determined it to be in the best interests of the district, may authorize by contract, lease, requisition, or purchase order, any public corporation or agency, including any county, city, town, or district, to lease data-processing equipment, purchase materials, supplies, equipment, automotive vehicles, tractors, and other personal property for the district in the manner in which the public corporation or agency is authorized by law to make the leases or purchases. Upon receipt of any such personal property, provided the property complies with the specifications set forth in the contract, lease, requisition, or purchase order, the community college district may draw a warrant in favor of the public corporation or agency for the amount of the approved invoice, including the reasonable costs to the public corporation or agency for furnishing the services incidental to the lease or purchase of the personal property.

20653. Nothing in this code shall preclude the governing board of any community college district from purchasing materials, equipment or supplies through the Department of General Services pursuant to Section 14814 of the Government Code.
20654. (a) In an emergency when any repairs, alterations, work, or improvement is necessary to any facility of the college, or to permit the continuance of existing college classes, or to avoid danger to life or property, the board may by unanimous vote, with the approval of the county superintendent of schools, do either of the following:

1) Make a contract in writing or otherwise on behalf of the district for the performance of labor and furnishing of materials or supplies for the purpose without advertising for or inviting bids.

2) Notwithstanding Section 20655, authorize the use of day labor or force account for the purpose.

(b) Nothing in this section shall eliminate the need for any bonds or security otherwise required by law.

20655. (a) In each community college district, the governing board may make repairs, alterations, additions, or painting, repainting, or decorating upon school buildings, repair or build apparatus or equipment, make improvements on the school grounds, erect new buildings, and perform maintenance as defined in Section 20656 by day labor, or by force account, whenever the total number of hours on the job does not exceed 350 hours. Moreover, in any district whose number of full-time equivalent students is 15,000 or greater, the governing board may, in addition, make repairs to school buildings, grounds, apparatus, or equipment, including painting or repainting, and perform maintenance, as defined in Section 20656, by day labor or by force account whenever the total number of hours on the job does not exceed 750 hours, or when the cost of materials does not exceed twenty-one thousand dollars ($21,000).

(b) For purposes of this section, day labor shall include the use of maintenance personnel employed on a permanent or temporary basis.

20656. For purposes of Section 20655, "maintenance" means routine, recurring, and usual work for the preservation, protection and keeping of any publicly owned or publicly operated facility for its intended purposes in a safe and continually usable condition for which it was designed, improved, constructed, altered or repaired. "Facility" means any plant, building, structure, ground facility, utility system, or real property.

This definition of "maintenance" expressly includes, but is not limited to: carpentry, electrical, plumbing, glazing, and other craft work designed consistent with the definition set forth above to preserve the facility in a safe, efficient, and continually usable condition for which it was intended, including repairs, cleaning, and other operations on machinery and other equipment permanently attached to the building or realty as fixtures.

This definition does not include, among other types of work, janitorial or custodial services and protection of the sort provided by guards or other security forces.

It is the intent of the Legislature that this definition does not include painting, repainting, or decorating other than touchup, but instead it is the intent of the Legislature that such activities be controlled directly by the provisions of Section 20655.
20657. It shall be unlawful to split or separate into smaller work orders or projects any work, project, service, or purchase for the purpose of evading the provisions of this article requiring contracting after competitive bidding.

The district shall maintain job orders or similar records indicating the total cost expended on each project in accordance with the procedures established in the most recent edition of the California Community College Budget and Accounting Manual for a period of not less than three years after completion of the project.

Informal bidding may be used on work, projects, services, or purchases that cost up to the limits set forth in this article. For the purpose of securing informal bids, the board shall publish annually in a newspaper of general circulation published in the district, or if there is no such newspaper, then in some newspaper in general circulation in the county, a notice inviting contractors to register to be notified of future informal bidding projects. All contractors included on the informal bidding list shall be given notice of all informal bid projects, in any manner as the district deems appropriate.

20658. The governing board of any community college district may by majority vote authorize its district superintendent, or such person as he or she may designate, to expend up to two hundred fifty dollars ($250) per transaction for work done, compensation for employees or consultants, and purchases of equipment, supplies, or materials. Ratification by the governing board shall not be required with respect to transactions entered into pursuant to this section. In the event of malfeasance in office, the district official invested by the governing board with authority to act under this section shall be personally liable for any and all moneys of the district paid out as a result of such malfeasance.

20659. If any change or alteration of a contract governed by the provisions of this article is ordered by the governing board of the community college district, such change or alteration shall be specified in writing and the cost agreed upon between the governing board and the contractor. The board may authorize the contractor to proceed with performance of the change or alteration without the formality of securing bids, if the cost so agreed upon does not exceed the greater of:

(a) The amount specified in Section 20651 or 20655, whichever is applicable to the original contract; or

(b) Ten percent of the original contract price.

20660. Perishable food stuffs and seasonal commodities needed in the operation of cafeterias and food services may be purchased by a community college district in accordance with rules and regulations for the purchase adopted by the governing board of that district, notwithstanding any provisions of this code in conflict with the rules and regulations.

20661. (a) The Chancellor of the California Community Colleges is authorized to enter into a contract on behalf of one or more
community college districts, subject to the following restrictions:

(1) No district may be required to participate in any contract entered into pursuant to this section.

(2) The cost to each district that is a party to or a beneficiary of a contract entered into pursuant to this section must be lower than the cost the district could obtain through its standard contracting procedures. No contract for the procurement of goods or services may be made when a bid has been received by a participating district for the procurement of the same goods or services unless the contract would result in a lower price for the goods or services upon the same terms, conditions, and specifications.

(3) The state shall not incur any financial responsibility in connection with a contract entered into pursuant to this section.

(b) The Chancellor of the California Community Colleges is authorized to charge a fee, commission, or other charge to either or both of the following:

(1) Each provider of goods or services under a contract entered into pursuant to this section.

(2) Each community college district that the chancellor enters into a contract on behalf of pursuant to this section.

(c) On or before January 1, 2001, the Chancellor of the California Community Colleges shall report to the Legislature and the Governor on contracts entered into pursuant to this section and any resultant cost savings.

(d) The Board of Governors of the California Community Colleges shall adopt regulations to implement this section.

20662. The Chancellor of the California Community Colleges is authorized to enter into a contract or other agreement with the governing board of any community college district whereby the district performs services or acts as a fiscal agent on behalf of the California Community colleges. This section shall apply only when the funds for the contract or agreement are in satisfaction of the state obligation to provide funding pursuant to Section 8 of Article XVI of the California Constitution.

22000. This chapter shall be known and may be cited as the "Uniform Public Construction Cost Accounting Act."

22001. The Legislature finds and declares that there is a statewide need to promote uniformity of the cost accounting standards and bidding procedures on construction work performed or contracted by public entities in the state. This chapter provides for the development of cost accounting standards and an alternative method for the bidding of public works projects by public entities.

22001.5. On or before January 1, 2009, the Controller shall send a notice to all public agencies describing the provisions of this chapter and the benefits of using its provisions. This notice shall also be included in any notification issued by the Controller pursuant to Section 22020.
22002. (a) "Public agency," for purposes of this chapter, means a city, county, city and county, including chartered cities and chartered counties, any special district, and any other agency of the state for the local performance of governmental or proprietary functions within limited boundaries. "Public agency" also includes a nonprofit transit corporation wholly owned by a public agency and formed to carry out the purposes of the public agency.

(b) "Representatives of the construction industry" for purposes of this chapter, means a general contractor, subcontractor, or labor representative with experience in the field of public works construction.

(c) "Public project" means any of the following:
   (1) Construction, reconstruction, erection, alteration, renovation, improvement, demolition, and repair work involving any publicly owned, leased, or operated facility.
   (2) Painting or repainting of any publicly owned, leased, or operated facility.
   (3) In the case of a publicly owned utility system, "public project" shall include only the construction, erection, improvement, or repair of dams, reservoirs, powerplants, and electrical transmission lines of 230,000 volts and higher.

(d) "Public project" does not include maintenance work. For purposes of this section, "maintenance work" includes all of the following:
   (1) Routine, recurring, and usual work for the preservation or protection of any publicly owned or publicly operated facility for its intended purposes.
   (2) Minor repainting.
   (3) Resurfacing of streets and highways at less than one inch.
   (4) Landscape maintenance, including mowing, watering, trimming, pruning, planting, replacement of plants, and servicing of irrigation and sprinkler systems.
   (5) Work performed to keep, operate, and maintain publicly owned water, power, or waste disposal systems, including, but not limited to, dams, reservoirs, powerplants, and electrical transmission lines of 230,000 volts and higher.

(e) For purposes of this chapter, "facility" means any plant, building, structure, ground facility, utility system, subject to the limitation found in paragraph (3) of subdivision (c), real property, streets and highways, or other public work improvement.

22003. A public agency which has, by resolution, elected to become subject to the uniform construction cost accounting procedures set forth in Article 2 (commencing with Section 22010), may utilize the bidding procedures set forth in Article 3 (commencing with Section 22030) when contracting for "maintenance work," as defined in Section 22002, or when contracting for any other work which does not fall within the definition of "public project," as defined in Section 22002.

CALIFORNIA CODES  LABOR CODE  SECTIONS 1770-1781

1770. The Director of the Department of Industrial Relations shall determine the general prevailing rate of per diem wages in accordance with the standards set forth in Section 1773, and the director's
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.

1771.2. A joint labor-management committee established pursuant to the federal Labor Management Cooperation Act of 1978 (Section 175a of Title 29 of the United States Code) may bring an action in any court of competent jurisdiction against an employer that fails to pay the prevailing wage to its employees, as required by this article. This action shall be commenced not later than 180 days after the filing of a valid notice of completion in the office of the county recorder in each county in which the public work or some part thereof was performed, or not later than 180 days after acceptance of the public work, whichever last occurs.

1771.5. (a) Notwithstanding Section 1771, an awarding body may not require the payment of the general prevailing rate of per diem wages or the general prevailing rate of per diem wages for holiday and overtime work for any public works project of twenty-five thousand dollars ($25,000) or less when the project is for construction work, or for any public works project of fifteen thousand dollars ($15,000) or less when the project is for alteration, demolition, repair, or maintenance work, if the awarding body elects to initiate and enforce a labor compliance program pursuant to subdivision (b) for every public works project under the authority of the awarding body.

(b) For the purposes of this section, a labor compliance program shall include, but not be limited to, the following requirements:

(1) All bid invitations and public works contracts shall contain appropriate language concerning the requirements of this chapter.

(2) A prejob conference shall be conducted with the contractor and subcontractors to discuss federal and state labor law requirements applicable to the contract.

(3) 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.

(4) The awarding body shall review, and, if appropriate, audit payroll records to verify compliance with this chapter.

(5) The awarding body shall withhold contract payments when payroll records are delinquent or inadequate.

(6) The awarding body shall withhold contract payments equal to the amount of underpayment and applicable penalties when, after
investigation, it is established that underpayment has occurred.

(c) For purposes of this chapter, "labor compliance program" means a labor compliance program that is approved, as specified in state regulations, by the Director of the Department of Industrial Relations.

(d) For purposes of this chapter, the Director of the Department of Industrial Relations may revoke the approval of a labor compliance program in the manner specified in state regulations.

1771.6. (a) Any awarding body that enforces this chapter in accordance with Section 1726 or 1771.5 shall provide notice of the withholding of contract payments to the contractor and subcontractor, if applicable. The notice shall be in writing and shall describe the nature of the violation and the amount of wages, penalties, and forfeitures withheld. Service of the notice shall be completed pursuant to Section 1013 of the Code of Civil Procedure by first-class and certified mail to the contractor and subcontractor, if applicable. The notice shall advise the contractor and subcontractor, if applicable, of the procedure for obtaining review of the withholding of contract payments.

The awarding body shall also serve a copy of the notice by certified mail to any bonding company issuing a bond that secures the payment of wages covered by the notice and to any surety on a bond, if their identities are known to the awarding body.

(b) The withholding of contract payments in accordance with Section 1726 or 1771.5 shall be reviewable under Section 1742 in the same manner as if the notice of the withholding was a civil penalty order of the Labor Commissioner under this chapter. If review is requested, the Labor Commissioner may intervene to represent the awarding body.

(c) Pending a final order, or the expiration of the time period for seeking review of the notice of the withholding, the awarding body shall not disburse any contract payments withheld.

(d) From the amount recovered, the wage claim shall be satisfied prior to the amount being applied to penalties. If insufficient money is recovered to pay each worker in full, the money shall be prorated among all workers.

(e) Wages for workers who cannot be located shall be placed in the Industrial Relations Unpaid Wage Fund and held in trust for the workers pursuant to Section 96.7. Penalties shall be paid into the General Fund of the awarding body that has enforced this chapter pursuant to Section 1771.5.

1771.7. (a) (1) An awarding body that chooses to use funds derived from either the Kindergarten-University Public Education Facilities Bond Act of 2002 or the Kindergarten-University Public Education Facilities Bond Act of 2004 for a public works project, shall initiate and enforce, or contract with a third party to initiate and enforce, a labor compliance program, as described in subdivision (b) of Section 1771.5, with respect to that public works project.

(2) If an awarding body described in paragraph (1) chooses to contract with a third party to initiate and enforce a labor compliance program for a project described in paragraph (1), that third party shall not review the payroll records of its own employees or the employees of its subcontractors, and the awarding body or an independent third party shall review these payroll records for purposes of the labor compliance program.

(b) This section applies to public works that commence on or after
April 1, 2003. For purposes of this subdivision, work performed during the design and preconstruction phases of construction, including, but not limited to, inspection and land surveying work, does not constitute the commencement of a public work.

(c) (1) For purposes of this section, if any campus of the California State University chooses to use the funds described in subdivision (a), then the "awarding body" is the Chancellor of the California State University. For purposes of this subdivision, if the chancellor is required by subdivision (a) to initiate and enforce, or to contract with a third party to initiate and enforce, the labor compliance program described in that subdivision, then in addition to the requirements imposed upon an awarding body by subdivision (b) of Section 1771.5, the Chancellor of the California State University shall review the payroll records described in paragraphs (3) and (4) of subdivision (b) of Section 1771.5 on at least a monthly basis to ensure the awarding body's compliance with the labor compliance program.

(2) For purposes of this subdivision, if an awarding body described in subdivision (a) is the University of California or any campus of that university, and that awarding body is required by subdivision (a) to initiate and enforce, or to contract with a third party to initiate and enforce, the labor compliance program described in that subdivision, then in addition to the requirements imposed upon an awarding body by subdivision (b) of Section 1771.5, the payroll records described in paragraphs (3) and (4) of subdivision (b) of Section 1771.5 shall be reviewed on at least a monthly basis to ensure the awarding body's compliance with the labor compliance program.

(d) (1) An awarding body described in subdivision (a) shall make a written finding that the awarding body has initiated and enforced, or has contracted with a third party to initiate and enforce, the labor compliance program described in subdivision (a).

(2) (A) If an awarding body described in subdivision (a) is a school district, the governing body of that district shall transmit to the State Allocation Board, in the manner determined by that board, a copy of the finding described in paragraph (1).

(B) The State Allocation Board may not release the funds described in subdivision (a) to an awarding body that is a school district until the State Allocation Board has received the written finding described in paragraph (1).

(C) If the State Allocation Board conducts a postaward audit procedure with respect to an award of the funds described in subdivision (a) to an awarding body that is a school district, the State Allocation Board shall verify, in the manner determined by that board, that the school district has complied with the requirements of this subdivision.

(3) If an awarding body described in subdivision (a) is a community college district, the Chancellor of the California State University, or the office of the President of the University of California or any campus of the University of California, that awarding body shall transmit, in the manner determined by the Director of the Department of Industrial Relations, a copy of the finding described in paragraph (1) to the director of that department, or the director of any successor agency that is responsible for the oversight of employee wage and employee work hours laws.

(e) Notwithstanding Section 17070.63 of the Education Code, for purposes of this act, the State Allocation Board shall increase the grant amounts as described in Chapter 12.5 (commencing with Section 17070.10) of Part 10 of Division 1 of Title 1 of the Education Code to accommodate the state's share of the increased costs of a new
construction or modernization project due to the initiation and enforcement of the labor compliance program.

1771.8. (a) The body awarding any contract for a public works project financed in any part with funds made available by the Water Security, Clean Drinking Water, Coastal and Beach Protection Act of 2002 (Division 26.5 (commencing with Section 79500) of the Water Code) shall adopt and enforce, or contract with a third party to adopt and enforce, a labor compliance program pursuant to subdivision (b) of Section 1771.5 for application to that public works project.

(b) This section shall become operative only if the Water Security, Clean Drinking Water, Coastal and Beach Protection Act of 2002 (Division 26.5 (commencing with Section 79500) of the Water Code) is approved by the voters at the November 5, 2002, statewide general election.

1771.9. (a) The body awarding any contract for a public works project financed in any part with funds made available by the Safe, Reliable High-Speed Passenger Train Bond Act for the 21st Century (Chapter 20 (commencing with Section 2704) of Division 3 of the Streets and Highways Code) shall adopt and enforce, or contract with a third party to adopt and enforce, a labor compliance program pursuant to subdivision (b) of Section 1771.5 for application to that public works project.

(b) This section shall become operative only if the Safe, Reliable High-Speed Passenger Train Bond Act for the 21st Century (Chapter 20 (commencing with Section 2704) of Division 3 of the Streets and Highways Code) is approved by the voters at the November 2, 2004, statewide general election.

(c) The Department of Industrial Relations' and the Labor and Workforce Development Agency's public works services provided to labor compliance programs, interested parties, and awarding bodies associated with bond funding projects, that are governed by the public works requirements of this chapter, are to be supported as costs of a state agency with responsibility for administration of the bond program, or costs of construction, under subdivisions (a) and (d) of Section 16727 of the Government Code. Public works services under this chapter include all of the following:

(1) Prevailing wage measurement and setting.
(2) Wage petitions and special determinations.
(3) Coverage advice and determinations training for and approval of, labor compliance programs' establishment and enforcement notices to withhold.
(4) Civil wage and penalty assessments.
(5) Hearings in response to contractor requests under subdivision (b) of Section 1171.6, Section 1742, and Section 1777.7.

1772. Workers employed by contractors or subcontractors in the execution of any contract for public work are deemed to be employed upon public work.

1773. The body awarding any contract for public work, or otherwise undertaking any public work, shall obtain the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in the locality in which the public work is to be performed for each craft, classification, or type of worker needed to execute the contract from the Director of Industrial Relations. The holidays upon which those rates shall be paid need not be specified
by the awarding body, but shall be all holidays recognized in the applicable collective bargaining agreement. If the prevailing rate is not based on a collectively bargained rate, the holidays upon which the prevailing rate shall be paid shall be as provided in Section 6700 of the Government Code.

In determining the rates, the Director of Industrial Relations shall ascertain and consider the applicable wage rates established by collective bargaining agreements and the rates that may have been predetermined for federal public works, within the locality and in the nearest labor market area. Where the rates do not constitute the rates actually prevailing in the locality, the director shall obtain and consider further data from the labor organizations and employers or employer associations concerned, including the recognized collective bargaining representatives for the particular craft, classification, or type of work involved. The rate fixed for each craft, classification, or type of work shall be not less than the prevailing rate paid in the craft, classification, or type of work.

If the director determines that the rate of prevailing wage for any craft, classification, or type of worker is the rate established by a collective bargaining agreement, the director may adopt that rate by reference as provided for in the collective bargaining agreement and that determination shall be effective for the life of the agreement or until the director determines that another rate should be adopted.

1773.1. (a) Per diem wages, when the term is used in this chapter or in any other statute applicable to public works, shall be deemed to include employer payments for the following:

(1) Health and welfare.
(2) Pension.
(3) Vacation.
(4) Travel.
(5) Subsistence.
(6) Apprenticeship or other training programs authorized by Section 3093, so long as the cost of training is reasonably related to the amount of the contributions.
(7) Worker protection and assistance programs or committees established under the federal Labor Management Cooperation Act of 1978 (Section 175a of Title 29 of the United States Code), to the extent that the activities of the programs or committees are directed to the monitoring and enforcement of laws related to public works.
(8) Industry advancement and collective bargaining agreements administrative fees, provided that these payments are required under a collective bargaining agreement pertaining to the particular craft, classification, or type of work within the locality or the nearest labor market area at issue.
(9) Other purposes similar to those specified in paragraphs (1) to (8), inclusive.

(b) Employer payments include all of the following:
(1) The rate of contribution irrevocably made by the employer to a trustee or third person pursuant to a plan, fund, or program.
(2) The rate of actual costs to the employer reasonably anticipated in providing benefits to workers pursuant to an enforceable commitment to carry out a financially responsible plan or program communicated in writing to the workers affected.
(3) Payments to the California Apprenticeship Council pursuant to Section 1777.5.
(c) Employer payments are a credit against the obligation to pay the general prevailing rate of per diem wages. However, no credit shall be granted for benefits required to be provided by other state or federal law. Credits for employer payments also shall not reduce the obligation to pay the hourly straight time or overtime wages found to be prevailing.

(d) The credit for employer payments shall be computed on an annualized basis where the employer seeks credit for employer payments that are higher for public works projects than for private construction performed by the same employer, except where one or more of the following occur:

1. The employer has an enforceable obligation to make the higher rate of payments on future private construction performed by the employer.
2. The higher rate of payments is required by a project labor agreement.
3. The payments are made to the California Apprenticeship Council pursuant to Section 1777.5.
4. The director determines that annualization would not serve the purposes of this chapter.

(e) (1) For the purpose of determining those per diem wages for contracts, the representative of any craft, classification, or type of worker needed to execute contracts shall file with the Department of Industrial Relations fully executed copies of the collective bargaining agreements for the particular craft, classification, or type of work involved. The collective bargaining agreements shall be filed after their execution and thereafter may be taken into consideration pursuant to Section 1773 whenever filed 30 days prior to the call for bids. If the collective bargaining agreement has not been formalized, a typescript of the final draft may be filed temporarily, accompanied by a statement under penalty of perjury as to its effective date.

2. Where a copy of the collective bargaining agreement has previously been filed, fully executed copies of all modifications and extensions of the agreement that affect per diem wages or holidays shall be filed.

3. The failure to comply with filing requirements of this subdivision shall not be grounds for setting aside a prevailing wage determination if the information taken into consideration is correct.

1773.2. The body awarding any contract for public work, or otherwise undertaking any public work, shall specify in the call for bids for the contract, and in the bid specifications and in the contract itself, what the general rate of per diem wages is for each craft, classification, or type of worker needed to execute the contract.

In lieu of specifying the rate of wages in the call for bids, and in the bid specifications and in the contract itself, the awarding body may, in the call for bids, bid specifications, and contract, include a statement that copies of the prevailing rate of per diem wages are on file at its principal office, which shall be made available to any interested party on request. The awarding body shall also cause a copy of the determination of the director of the prevailing rate of per diem wages to be posted at each job site.

1773.3. An awarding agency whose public works contract falls within the jurisdiction of Section 1777.5 shall, within five days of the award, send a copy of the award to the Division of Apprenticeship Standards. When specifically requested by a local joint apprenticeship committee, the division shall notify the local joint apprenticeship committee regarding all such awards applicable to the
joint apprenticeship committee making the request. Within five days of a finding of any discrepancy regarding the ratio of apprentices to journeymen, pursuant to the certificated fixed number of apprentices to journeymen, the awarding agency shall notify the Division of Apprenticeship Standards.

1773.4. Any prospective bidder or his representative, any representative of any craft, classification or type of workman involved, or the awarding body may, within 20 days after commencement of advertising of the call for bids by the awarding body, file with the Director of Industrial Relations a verified petition to review the determination of any such rate or rates upon the ground that they have not been determined in accordance with the provision of Section 1773 of this code. Within two days thereafter, a copy of such petition shall be filed with the awarding body. The petition shall set forth the facts upon which it is based. The Director of Industrial Relations or his authorized representative shall, upon notice to the petitioner, the awarding body and such other persons as he deems proper, including the recognized collective bargaining representatives for the particular crafts, classifications or types of work involved, institute an investigation or hold a hearing. Within 20 days after the filing of such petition, or within such longer period as agreed upon by the director, the awarding body, and all the interested parties, he shall make a determination and transmit the same in writing to the awarding body and to the interested parties.

Such determination shall be final and shall be the determination of the awarding body. Upon receipt by it of the notice of the filing of such petition the body awarding the contract or authorizing the public work shall extend the closing date for the submission of bids or the starting of work until five days after the determination of the general prevailing rates of per diem wages pursuant to this section. Upon the filing of any such petition, notice thereof shall be set forth in the next and all subsequent publications by the awarding body of the call for bids. No other notice need be given to bidders by the awarding body by publication or otherwise. The determination of the director shall be included in the contract.

1773.5. The Director of Industrial Relations may establish rules and regulations for the purpose of carrying out this chapter, including, but not limited to, the responsibilities and duties of awarding bodies under this chapter.

1773.6. If during any quarterly period the Director of Industrial Relations shall determine that there has been a change in any prevailing rate of per diem wages in any locality he shall make such change available to the awarding body and his determination shall be final. Such determination by the Director of Industrial Relations shall not be effective as to any contract for which the notice to bidders has been published.

1773.7. The provisions of Section 11250 of the Government Code shall not be applicable to Sections 1773, 1773.4, and 1773.6.
1773.9. (a) The Director of Industrial Relations shall use the methodology set forth in subdivision (b) to determine the general prevailing rate of per diem wages in the locality in which the public work is to be performed.

(b) The general prevailing rate of per diem wages includes all of the following:

(1) The basic hourly wage rate being paid to a majority of workers engaged in the particular craft, classification, or type of work within the locality and in the nearest labor market area, if a majority of the workers is paid at a single rate. If no single rate is being paid to a majority of the workers, then the single rate being paid to the greatest number of workers, or modal rate, is prevailing. If a modal rate cannot be determined, then the director shall establish an alternative rate, consistent with the methodology for determining the modal rate, by considering the appropriate collective bargaining agreements, federal rates, rates in the nearest labor market area, or other data such as wage survey data.

(2) Other employer payments included in per diem wages pursuant to Section 1773.1 and as included as part of the total hourly wage rate from which the basic hourly wage rate was derived. In the event the total hourly wage rate does not include any employer payments, the director shall establish a prevailing employer payment rate by the same procedure set forth in paragraph (1).

(3) The rate for holiday and overtime work shall be those rates specified in the collective bargaining agreement when the basic hourly rate is based on a collective bargaining agreement rate. In the event the basic hourly rate is not based on a collective bargaining agreement, the rate for holidays and overtime work, if any, included with the prevailing basic hourly rate of pay shall be prevailing.

(c) (1) If the director determines that the general prevailing rate of per diem wages is the rate established by a collective bargaining agreement, and that the collective bargaining agreement contains definite and predetermined changes during its term that will affect the rate adopted, the director shall incorporate those changes into the determination. Predetermined changes that are rescinded prior to their effective date shall not be enforced.

(2) When the director determines that there is a definite and predetermined change in the general prevailing rate of per diem wages as described in paragraph (1), but has not published, at the time of the effective date of the predetermined change, the allocation of the predetermined change as between the basic hourly wage and other employer payments included in per diem wages pursuant to Section 1773.1, a contractor or subcontractor may allocate payments of not less than the amount of the definite and predetermined change to either the basic hourly wage or other employer payments included in per diem wages for up to 60 days following the director's publication of the specific allocation of the predetermined change.

(3) When the director determines that there is a definite and predetermined change in the general prevailing rate of per diem wages as described in paragraph (1), but the allocation of that predetermined change as between the basic hourly wage and other employer payments included in per diem wages pursuant to Section 1773.1 is subsequently altered by the parties to a collective bargaining agreement described in paragraph (1), a contractor or subcontractor may allocate payments of not less than the amount of the definite and predetermined change in accordance with either the originally published allocation or the allocation as altered in the collective bargaining agreement.
1773. (a) Notwithstanding any other provision of law and except as otherwise provided by this section, if the state or a political subdivision thereof agrees by contract with a private entity that the private entity's employees receive, in performing that contract, the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work, the director shall, upon a request by the state or the political subdivision, do both of the following:

1. Determine, as otherwise provided by law, the wage rates for each craft, classification, or type of worker that are needed to execute the contract.
2. Provide these wage rates to the state or political subdivision that requests them.

(b) This section does not apply to a contract for a public work, as defined in this chapter.

(c) The director shall determine and provide the wage rates described in this section in the order in which the requests for these wage rates were received and regardless of the calendar year in which they were received. If there are more than 20 pending requests in a calendar year, the director shall respond only to the first 20 requests in the order in which they were received. If the director determines that funding is available in any calendar year to determine and provide these wage rates in response to more than 20 requests, the director shall respond to these requests in a manner consistent with this subdivision.

1774. The contractor to whom the contract is awarded, and any subcontractor under him, shall pay not less than the specified prevailing rates of wages to all workmen employed in the execution of the contract.

1775. (a) (1) The contractor and any subcontractor under the contractor shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit not more than fifty dollars ($50) for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rates as determined by the director for the work or craft in which the worker is employed for any public work done under the contract by the contractor or, except as provided in subdivision (b), by any subcontractor under the contractor.

2. (A) The amount of the penalty shall be determined by the Labor Commissioner based on consideration of both of the following:
   (i) Whether the failure of the contractor or subcontractor to pay the correct rate of per diem wages was a good faith mistake and, if so, the error was promptly and voluntarily corrected when brought to the attention of the contractor or subcontractor.
   (ii) Whether the contractor or subcontractor has a prior record of failing to meet its prevailing wage obligations.

   (B) (i) The penalty may not be less than ten dollars ($10) for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rate, unless the failure of the contractor or subcontractor to pay the correct rate of per diem wages was a good faith mistake and, if so, the error was promptly and voluntarily corrected when brought to the attention of the contractor or subcontractor.

   (ii) The penalty may not be less than twenty dollars ($20) for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rate, if the contractor or subcontractor has
been assessed penalties within the previous three years for failing to meet its prevailing wage obligations on a separate contract, unless those penalties were subsequently withdrawn or overturned.

(iii) The penalty may not be less than thirty dollars ($30) for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rate, if the Labor Commissioner determines that the violation was willful, as defined in subdivision (c) of Section 1777.1.

(C) When the amount due under this section is collected from the contractor or subcontractor, any outstanding wage claim under Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 against that contractor or subcontractor shall be satisfied before applying that amount to the penalty imposed on that contractor or subcontractor pursuant to this section.

(D) The determination of the Labor Commissioner as to the amount of the penalty shall be reviewable only for abuse of discretion.

(E) The difference between the prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate shall be paid to each worker by the contractor or subcontractor, and the body awarding the contract shall cause to be inserted in the contract a stipulation that this section will be complied with.

(b) If a worker employed by a subcontractor on a public works project is not paid the general prevailing rate of per diem wages by the subcontractor, the prime contractor of the project is not liable for any penalties under subdivision (a) unless the prime contractor had knowledge of that failure of the subcontractor to pay the specified prevailing rate of wages to those workers or unless the prime contractor fails to comply with all of the following requirements:

(1) The contract executed between the contractor and the subcontractor for the performance of work on the public works project shall include a copy of the provisions of Sections 1771, 1775, 1776, 1777.5, 1813, and 1815.

(2) The contractor shall monitor the payment of the specified general prevailing rate of per diem wages by the subcontractor to the employees, by periodic review of the certified payroll records of the subcontractor.

(3) Upon becoming aware of the failure of the subcontractor to pay his or her workers the specified prevailing rate of wages, the contractor shall diligently take corrective action to halt or rectify the failure, including, but not limited to, retaining sufficient funds due the subcontractor for work performed on the public works project.

(4) Prior to making final payment to the subcontractor for work performed on the public works project, the contractor shall obtain an affidavit signed under penalty of perjury from the subcontractor that the subcontractor has paid the specified general prevailing rate of per diem wages to his or her employees on the public works project and any amounts due pursuant to Section 1813.

(c) The Division of Labor Standards Enforcement shall notify the contractor on a public works project within 15 days of the receipt by the Division of Labor Standards Enforcement of a complaint of the failure of a subcontractor on that public works project to pay workers the general prevailing rate of per diem wages.
connection with the public work. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:

(1) The information contained in the payroll record is true and correct.
(2) The employer has complied with the requirements of Sections 1771, 1811, and 1815 for any work performed by his or her employees on the public works project.

(b) The payroll records enumerated under subdivision (a) shall be certified and shall be available for inspection at all reasonable hours at the principal office of the contractor on the following basis:

(1) A certified copy of an employee's payroll record shall be made available for inspection or furnished to the employee or his or her authorized representative on request.
(2) A certified copy of all payroll records enumerated in subdivision (a) shall be made available for inspection or furnished upon request to a representative of the body awarding the contract, the Division of Labor Standards Enforcement, and the Division of Apprenticeship Standards of the Department of Industrial Relations.

(3) A certified copy of all payroll records enumerated in subdivision (a) shall be made available upon request by the public for inspection or for copies thereof. However, a request by the public shall be made through either the body awarding the contract, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement. If the requested payroll records have not been provided pursuant to paragraph (2), the requesting party shall, prior to being provided the records, reimburse the costs of preparation by the contractor, subcontractors, and the entity through which the request was made. The public may not be given access to the records at the principal office of the contractor.

(c) The certified payroll records shall be on forms provided by the Division of Labor Standards Enforcement or shall contain the same information as the forms provided by the division. The payroll records may consist of printouts of payroll data that are maintained as computer records, if the printouts contain the same information as the forms provided by the division and the printouts are verified in the manner specified in subdivision (a).

(d) A contractor or subcontractor shall file a certified copy of the records enumerated in subdivision (a) with the entity that requested the records within 10 days after receipt of a written request.

(e) Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by the awarding body, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement shall be marked or obliterated to prevent disclosure of an individual's name, address, and social security number. The name and address of the contractor awarded the contract or the subcontractor performing the contract shall not be marked or obliterated. Any copy of records made available for inspection by, or furnished to, a joint labor-management committee established pursuant to the federal Labor Management Cooperation Act of 1978 (29 U.S.C. Sec. 175a) shall be marked or obliterated only to prevent disclosure of an individual's name and social security number. A joint labor management committee may maintain an action in a court of competent jurisdiction against an employer who fails to comply with Section 1774. The court may award restitution to an employee for unpaid wages and may award the joint labor management committee reasonable attorney's fees and costs incurred in maintaining the action. An action under this subdivision
may not be based on the employer’s misclassification of the craft of
a worker on its certified payroll records. Nothing in this subdivision limits
any other available remedies for a violation of this chapter.

(f) The contractor shall inform the body awarding the contract of
the location of the records enumerated under subdivision (a),
including the street address, city, and county, and shall, within five
working days, provide a notice of a change of location and address.

(g) The contractor or subcontractor has 10 days in which to comply
subsequent to receipt of a written notice requesting the records
enumerated in subdivision (a). In the event that the contractor or
subcontractor fails to comply within the 10-day period, he or she
shall, as a penalty to the state or political subdivision on whose
behalf the contract is made or awarded, forfeit twenty-five dollars
($25) for each calendar day, or portion thereof, for each worker, until
strict compliance is effectuated. Upon the request of the Division of
Apprenticeship Standards or the Division of Labor Standards Enforcement,
these penalties shall be withheld from progress payments then due. A
contractor is not subject to a penalty assessment pursuant to this section
due to the failure of a subcontractor to comply with this section.

(h) The body awarding the contract shall cause to be inserted in
the contract stipulations to effectuate this section.

(i) The director shall adopt rules consistent with the California
Public Records Act (Chapter 3.5 (commencing with Section 6250) of
Division 7 of Title 1 of the Government Code) and the Information
Practices Act of 1977 (Title 1.8 (commencing with Section 1798) of
Part 4 of Division 3 of the Civil Code) governing the release of
these records, including the establishment of reasonable fees to be
charged for reproducing copies of records required by this section.

1777. Any officer, agent, or representative of the State or of any
political subdivision who willfully violates any provision of this
article, and any contractor, or subcontractor, or agent or
representative thereof, doing public work who neglects to comply with
any provision of section 1776 is guilty of a misdemeanor.

1777.1. (a) Whenever a contractor or subcontractor performing a
public works project pursuant to this chapter is found by the Labor
Commissioner to be in violation of this chapter with intent to
defraud, except Section 1777.5, the contractor or subcontractor or a firm,
corporation, partnership, or association in which the contractor or
subcontractor has any interest is ineligible for a period of not less than
one year or more than three years to do either of the following:

(1) Bid on or be awarded a contract for a public works project.
(2) Perform work as a subcontractor on a public works project.

(b) Whenever a contractor or subcontractor performing a public
works project pursuant to this chapter is found by the Labor Commissioner to
be in willful violation of this chapter, except Section 1777.5, the
contractor or subcontractor or a firm, corporation, partnership, or
association in which the contractor or subcontractor has any interest is
ineligible for a period up to three years for each second and subsequent
violation occurring within three years of a separate and previous willful
violation of this chapter to do either of the following:

(1) Bid on or be awarded a contract for a public works project.
(2) Perform work as a subcontractor on a public works project.
(c) A willful violation occurs when the contractor or subcontractor knew or reasonably should have known of his or her obligations under the public works law and deliberately fails or refuses to comply with its provisions.

(d) Not less than semiannually, the Labor Commissioner shall publish and distribute to awarding bodies a list of contractors who are ineligible to bid on or be awarded a public works contract, or to perform work as a subcontractor on a public works project pursuant to this chapter. The list shall contain the name of the contractor, the Contractor's State License Board license number of the contractor, and the effective period of debarment of the contractor. The commissioner shall also place advertisements in construction industry publications targeted to the contractors and subcontractors, chosen by the commissioner, that state the effective period of the debarment and the reason for debarment. The advertisements shall appear one time for each debarment of a contractor in each publication chosen by the commissioner. The debarred contractor or subcontractor shall be liable to the commissioner for the reasonable cost of the advertisements, not to exceed five thousand dollars ($5,000). The amount paid to the commissioner for the advertisements shall be credited against the contractor's or subcontractor's obligation to pay civil fines or penalties for the same willful violation of this chapter.

(e) For purposes of this section, "contractor or subcontractor" means a firm, corporation, partnership, or association and its responsible managing officer, as well as any supervisors, managers, and officers found by the Labor Commissioner to be personally and substantially responsible for the willful violation of this chapter.

(f) For the purposes of this section, the term "any interest" means an interest in the entity bidding or performing work on the public works project, whether as an owner, partner, officer, manager, employee, agent, consultant, or representative. "Any interest" includes, but is not limited to, all instances where the debarred contractor or subcontractor receives payments, whether cash or any other form of compensation, from any entity bidding or performing work on the public works project, or enters into any contracts or agreements with the entity bidding or performing work on the public works project for services performed or to be performed for contracts that have been or will be assigned or sublet, or for vehicles, tools, equipment, or supplies that have been or will be sold, rented, or leased during the period from the initiation of the debarment proceedings until the end of the term of the debarment period. "Any interest" does not include shares held in a publicly traded corporation if the shares were not received as compensation after the initiation of debarment from an entity bidding or performing work on a public works project.

(g) For the purposes of this section, the term "entity" is defined as a company, limited liability company, association, partnership, sole proprietorship, limited liability partnership, corporation, business trust, or organization.

(h) The Labor Commissioner shall adopt rules and regulations for the administration and enforcement of this section.

1777.5. (a) Nothing in this chapter shall prevent the employment of properly registered apprentices upon public works.

(b) Every apprentice employed upon public works shall be paid the prevailing rate of per diem wages for apprentices in the trade to which he or she is registered and shall be employed only at the work
of the craft or trade to which he or she is registered.

(c) Only apprentices, as defined in Section 3077, who are in training under apprenticeship standards that have been approved by the Chief of the Division of Apprenticeship Standards and who are parties to written apprentice agreements under Chapter 4 (commencing with Section 3070) of Division 3 are eligible to be employed at the apprentice wage rate on public works. The employment and training of each apprentice shall be in accordance with either of the following:

1. The apprenticeship standards and apprentice agreements under which he or she is training.

2. The rules and regulations of the California Apprenticeship Council.

(d) When the contractor to whom the contract is awarded by the state or any political subdivision, in performing any of the work under the contract, employs workers in any apprenticeable craft or trade, the contractor shall employ apprentices in at least the ratio set forth in this section and may apply to any apprenticeship program in the craft or trade that can provide apprentices to the site of the public work for a certificate approving the contractor under the apprenticeship standards for the employment and training of apprentices in the area or industry affected. However, the decision of the apprenticeship program to approve or deny a certificate shall be subject to review by the Administrator of Apprenticeship. The apprenticeship program or programs, upon approving the contractor, shall arrange for the dispatch of apprentices to the contractor. A contractor covered by an apprenticeship program's standards shall not be required to submit any additional application in order to include additional public works contracts under that program.

"Apprenticeable craft or trade," as used in this section, means a craft or trade determined as an apprenticeable occupation in accordance with rules and regulations prescribed by the California Apprenticeship Council. As used in this section, "contractor" includes any subcontractor under a contractor who performs any public works not excluded by subdivision (o).

(e) Prior to commencing work on a contract for public works, every contractor shall submit contract award information to an applicable apprenticeship program that can supply apprentices to the site of the public work. The information submitted shall include an estimate of journeyman hours to be performed under the contract, the number of apprentices proposed to be employed, and the approximate dates the apprentices would be employed. A copy of this information shall also be submitted to the awarding body if requested by the awarding body. Within 60 days after concluding work on the contract, each contractor and subcontractor shall submit to the awarding body, if requested, and to the apprenticeship program a verified statement of the journeyman and apprentice hours performed on the contract. The information under this subdivision shall be public. The apprenticeship programs shall retain this information for 12 months.

(f) The apprenticeship program that can supply apprentices to the area of the site of the public work shall ensure equal employment and affirmative action in apprenticeship for women and minorities.

(g) The ratio of work performed by apprentices to journeymen employed in a particular craft or trade on the public work may be no higher than the ratio stipulated in the apprenticeship standards under which the apprenticeship program operates where the contractor agrees to be bound by those standards, but, except as otherwise provided in this section, in no case shall the ratio be less than one hour of apprentice work for every five hours of journeyman work.

(h) This ratio of apprentice work to journeyman work shall apply
during any day or portion of a day when any journeyman is employed at
the jobsite and shall be computed on the basis of the hours worked
during the day by journeymen so employed. Any work performed by a
journeyman in excess of eight hours per day or 40 hours per week
shall not be used to calculate the ratio. The contractor shall employ
apprentices for the number of hours computed as above before the end
of the contract or, in the case of a subcontractor, before the end
of the subcontract. However, the contractor shall endeavor, to the
greatest extent possible, to employ apprentices during the same time
period that the journeymen in the same craft or trade are employed at
the jobsite. Where an hourly apprenticeship ratio is not feasible
for a particular craft or trade, the Chief of the Division of
Apprenticeship Standards, upon application of an apprenticeship
program, may order a minimum ratio of not less than one apprentice
for each five journeymen in a craft or trade classification.

(i) A contractor covered by this section that has agreed to be
covered by an apprenticeship program's standards upon the issuance of
the approval certificate, or that has been previously approved for
an apprenticeship program in the craft or trade, shall employ the
number of apprentices or the ratio of apprentices to journeymen
stipulated in the applicable apprenticeship standards, but in no
event less than the 1-to-5 ratio required by subdivision (g).

(j) Upon proper showing by a contractor that he or she employs
apprentices in a particular craft or trade in the state on all of his
or her contracts on an annual average of not less than one hour of
apprentice work for every five hours of labor performed by
journeymen, the Chief of the Division of Apprenticeship Standards may
grant a certificate exempting the contractor from the 1-to-5 hourly
ratio, as set forth in this section for that craft or trade.

(k) An apprenticeship program has the discretion to grant to a
participating contractor or contractor association a certificate, which shall
be subject to the approval of the Administrator of Apprenticeship, exempting
the contractor from the 1-to-5 ratio set forth in this section when it finds
that any one of the following conditions is met:

(1) Unemployment for the previous three-month period in the area
exceeds an average of 15 percent.

(2) The number of apprentices in training in the area exceeds a ratio of 1
to 5.

(3) There is a showing that the apprenticeable craft or trade is
replacing at least one-thirtieth of its journeymen annually through
apprenticeship training, either on a statewide basis or on a local basis.

(4) Assignment of an apprentice to any work performed under a
public works contract would create a condition that would jeopardize
his or her life or the life, safety, or property of fellow employees or the
public at large, or the specific task to which the apprentice is to be
assigned is of a nature that training cannot be provided by a journeyman.

(l) When an exemption is granted pursuant to subdivision (k) to an
organization that represents contractors in a specific trade from
the 1-to-5 ratio on a local or statewide basis, the member
contractors shall not be required to submit individual applications
for approval to local joint apprenticeship committees, if they are
already covered by the local apprenticeship standards.

(m) (1) A contractor to whom a contract is awarded, who, in
performing any of the work under the contract, employs journeymen or
apprentices in any apprenticeable craft or trade shall contribute to
the California Apprenticeship Council the same amount that the
director determines is the prevailing amount of apprenticeship
training contributions in the area of the public works site. A contractor may take as a credit for payments to the council any amounts paid by the contractor to an approved apprenticeship program that can supply apprentices to the site of the public works project. The contractor may add the amount of the contributions in computing his or her bid for the contract.

(2) At the conclusion of the 2002-03 fiscal year and each fiscal year thereafter, the California Apprenticeship Council shall distribute training contributions received by the council under this subdivision, less the expenses of the Division of Apprenticeship Standards for administering this subdivision, by making grants to approved apprenticeship programs for the purpose of training apprentices. The funds shall be distributed as follows:

(A) If there is an approved multiemployer apprenticeship program serving the same craft or trade and geographic area for which the training contributions were made to the council, a grant to that program shall be made.

(B) If there are two or more approved multiemployer apprenticeship programs serving the same craft or trade and geographic area for which the training contributions were made to the council, the grant shall be divided among those programs based on the number of apprentices registered in each program.

(C) All training contributions not distributed under subparagraphs (A) and (B) shall be used to defray the future expenses of the Division of Apprenticeship Standards.

(3) All training contributions received pursuant to this subdivision shall be deposited in the Apprenticeship Training Contribution Fund, which is hereby created in the State Treasury. Notwithstanding Section 13340 of the Government Code, all money in the Apprenticeship Training Contribution Fund is hereby continuously appropriated for the purpose of carrying out this subdivision and to pay the expenses of the Division of Apprenticeship Standards.

(n) The body awarding the contract shall cause to be inserted in the contract stipulations to effectuate this section. The stipulations shall fix the responsibility of compliance with this section for all apprenticeable occupations with the prime contractor.

(o) This section does not apply to contracts of general contractors or to contracts of specialty contractors not bidding for work through a general or prime contractor when the contracts of general contractors or those specialty contractors involve less than thirty thousand dollars ($30,000).

(p) All decisions of an apprenticeship program under this section are subject to Section 3081.

1777.6. An employer or a labor union shall not refuse to accept otherwise qualified employees as registered apprentices on any public works on any basis listed in subdivision (a) of Section 12940 of the Government Code, as those bases are defined in Sections 12926 and 12926.1 of the Government Code, except as provided in Section 3077 of this code and Section 12940 of the Government Code.

1777.7. (a) (1) A contractor or subcontractor that is determined by the Chief of the Division of Apprenticeship Standards to have knowingly violated Section 1777.5 shall forfeit as a civil penalty an amount not exceeding one hundred dollars ($100) for each full calendar day of noncompliance. The amount of this penalty may be
reduced by the Chief if the amount of the penalty would be disproportionate to the severity of the violation. A contractor or subcontractor that knowingly commits a second or subsequent violation of Section 1777.5 within a three-year period, where the noncompliance results in apprenticeship training not being provided as required by this chapter, shall forfeit as a civil penalty the sum of not more than three hundred dollars ($300) for each full calendar day of noncompliance. Notwithstanding Section 1727, upon receipt of a determination that a civil penalty has been imposed by the Chief, the awarding body shall withhold the amount of the civil penalty from contract progress payments then due or to become due.

(2) In lieu of the penalty provided for in this subdivision, the Chief may, for a first-time violation and with the concurrence of an apprenticeship program described in subdivision (d), order the contractor or subcontractor to provide apprentice employment equivalent to the work hours that would have been provided for apprentices during the period of noncompliance.

(b) In the event a contractor or subcontractor is determined by the Chief to have knowingly committed a serious violation of any provision of Section 1777.5, the Chief may also deny to the contractor or subcontractor, and to its responsible officers, the right to bid on or be awarded or perform work as a subcontractor on any public works contract for a period of up to one year for the first violation and for a period of up to three years for a second or subsequent violation. Each period of debarment shall run from the date the determination of noncompliance by the Chief becomes a final order of the Administrator of Apprenticeship.

(c) (1) An affected contractor, subcontractor, or responsible officer may obtain a review of the determination of the Chief imposing the debarment or civil penalty by transmitting a written request to the office of the Administrator within 30 days after service of the determination of debarment or civil penalty. A copy of this report shall also be served on the Chief. If the Administrator does not receive a timely request for review of the determination of debarment or civil penalty made by the Chief, the order shall become the final order of the Administrator.

(2) Within 20 days of the timely receipt of a request for review, the Chief shall provide the contractor, subcontractor, or responsible officer the opportunity to review any evidence the Chief may offer at the hearing. The Chief shall also promptly disclose any nonprivileged documents obtained after the 20-day time limit at a time set forth for exchange of evidence by the Administrator.

(3) Within 90 days of the timely receipt of a request for review, a hearing shall be commenced before the Administrator or an impartial hearing officer designated by the Administrator and possessing the qualifications of an administrative law judge pursuant to subdivision (b) of Section 11502 of the Government Code. The affected contractor, subcontractor, or responsible officer shall have the burden of providing evidence of compliance with Section 1777.5.

(4) Within 45 days of the conclusion of the hearing, the Administrator shall issue a written decision affirming, modifying, or dismissing the determination of debarment or civil penalty. The decision shall contain a statement of the factual and legal basis for the decision and an order. This decision shall be served on all parties and the awarding body pursuant to Section 1013 of the Code of Civil Procedure by first-class mail at the last known address of the party that the party has filed with the Administrator. Within 15
days of issuance of the decision, the Administrator may reconsider or modify the decision to correct an error, except that a clerical error may be corrected at any time.

(5) An affected contractor, subcontractor, or responsible officer who has timely requested review and obtained a decision under paragraph (4) may obtain review of the decision of the Administrator by filing a petition for a writ of mandate to the appropriate superior court pursuant to Section 1094.5 of the Code of Civil Procedure within 45 days after service of the final decision. If no timely petition for a writ of mandate is filed, the decision shall become the final order of the Administrator. The decision of the Administrator shall be affirmed unless the petitioner shows that the Administrator abused his or her discretion. If the petitioner claims that the findings are not supported by the evidence, abuse of discretion is established if the court determines that the findings are not supported by substantial evidence in light of the entire record.

(6) The Chief may certify a copy of the final order of the Administrator and file it with the clerk of the superior court in any county in which the affected contractor or subcontractor has property or has or had a place of business. The clerk, immediately upon the filing, shall enter judgment for the state against the person assessed in the amount shown on the certified order. A judgment entered pursuant to this section shall bear the same rate of interest and shall have the same effect as other judgments and be given the same preference allowed by the law on other judgments rendered for claims for taxes. The clerk shall not charge for the service performed by him or her pursuant to this section. An awarding body that has withheld funds in response to a determination by the Chief imposing a penalty under this section shall, upon receipt of a certified copy of a final order of the Administrator, promptly transmit the withheld funds, up to the amount of the certified order, to the Administrator.

(d) If a subcontractor is found to have violated Section 1777.5, the prime contractor of the project is not liable for any penalties under subdivision (a), unless the prime contractor had knowledge of the subcontractor's failure to comply with the provisions of Section 1777.5 or unless the prime contractor fails to comply with any of the following requirements:

(1) The contract executed between the contractor and the subcontractor or the performance of work on the public works project shall include a copy of the provisions of Sections 1771, 1775, 1776, 1777.5, 1813, and 1815.

(2) The contractor shall continually monitor a subcontractor's use of apprentices required to be employed on the public works project pursuant to subdivision (d) of Section 1777.5, including, but not limited to, periodic review of the certified payroll of the subcontractor.

(3) Upon becoming aware of a failure of the subcontractor to employ the required number of apprentices, the contractor shall take corrective action, including, but not limited to, retaining funds due the subcontractor for work performed on the public works project until the failure is corrected.

(4) Prior to making the final payment to the subcontractor for work performed on the public works project, the contractor shall obtain a declaration signed under penalty of perjury from the subcontractor that the subcontractor has employed the required number of apprentices on the public works project.

(e) Any funds withheld by the awarding body pursuant to this section shall be deposited in the General Fund if the awarding body is a state entity, or in the equivalent fund of an awarding body if the awarding body is an entity other than the state.

(f) The Chief shall consider, in setting the amount of a monetary
penalty, in determining whether a violation is serious, and in determining whether and for how long a party should be debarred for violating this section, all of the following circumstances:

1. Whether the violation was intentional.
2. Whether the party has committed other violations of Section 1777.5.
3. Whether, upon notice of the violation, the party took steps to voluntarily remedy the violation.
4. Whether, and to what extent, the violation resulted in lost training opportunities for apprentices.
5. Whether, and to what extent, the violation otherwise harmed apprentices or apprenticeship programs.

If a party seeks review of a decision by the Chief to impose a monetary penalty or period of debarment, the Administrator shall decide de novo the appropriate penalty, by considering the same factors set forth above.

(g) The interpretation of Section 1777.5 and this section shall be in accordance with the regulations of the California Apprenticeship Council. The Administrator may adopt regulations to establish guidelines for the imposition of monetary penalties and periods of debarment and may designate precedential decisions under Section 11425.60 of the Government Code.

1778. Every person, who individually or as a representative of an awarding or public body or officer, or as a contractor or subcontractor doing public work, or agent or officer thereof, who takes, receives, or conspires with another to take or receive, for his own use or the use of any other person any portion of the wages of any workman or working subcontractor, in connection with services rendered upon any public work is guilty of a felony.

1779. Any person or agent or officer thereof who charges, collects, or attempts to charge or collect, directly or indirectly, a fee or valuable consideration for registering any person for public work, or for giving information as to where such employment may be procured, or for placing, assisting in placing, or attempting to place, any person in public work, whether the person is to work directly for the State, or any political subdivision or for a contractor or subcontractor doing public work is guilty of a misdemeanor.

1780. Any person acting on behalf of the State or any political subdivision, or any contractor or subcontractor or agent or representative thereof, doing any public work who places any order for the employment of a workman on public work where the filling of the order for employment involves the charging of a fee, or the receiving of a valuable consideration from any applicant for employment is guilty of a misdemeanor.

1781. (a) (1) Notwithstanding any other provision of law, a contractor may, subject to paragraphs (2) and (3), bring an action in a court of competent jurisdiction to recover from the body awarding a contract for a public work or otherwise undertaking any public work any increased costs incurred by the contractor as a result of any decision by the body, the Department of Industrial Relations, or a court that classifies, after the time at which the body accepts the contractor's bid or awards the contractor a contract in circumstances where no bid is solicited, the work covered by the bid or contract as a "public work," as defined in this chapter, to which Section 1771
applies, if that body, before the bid opening or awarding of the contract, failed to identify as a "public work," as defined in this chapter, in the bid specification or in the contract documents that portion of the work that the decision classifies as a "public work."

(2) The body awarding a contract for a public work or otherwise undertaking any public work is not liable for increased costs in an action described in paragraph (1) if all of the following conditions are met:

(A) The contractor did not directly submit a bid to, or directly contract with, that body.

(B) The body stated in the contract, agreement, ordinance, or other written arrangement by which it undertook the public work that the work described in paragraph (1) was a "public work," as defined in this chapter, to which Section 1771 applies, and obligated the party with whom the body makes its written arrangement to cause the work described in paragraph (1) to be performed as a "public work."

(C) The body fulfilled all of its duties, if any, under the Civil Code or any other provision of law pertaining to the body providing and maintaining bonds to secure the payment of contractors, including the payment of wages to workers performing the work described in paragraph (1).

(3) If a contractor did not directly submit a bid to, or directly contract with a body awarding a contract for, or otherwise undertaking a public work, the liability of that body in an action commenced by the contractor under subdivision (a) is limited to that portion of a judgment, obtained by that contractor against the body that solicited the contractor's bid or awarded the contract to the contractor, that the contractor is unable to satisfy. For purposes of this paragraph, a contractor may not be deemed to be unable to satisfy any portion of a judgment unless, in addition to other collection measures, the contractor has made a good faith attempt to collect that portion of the judgment against a surety bond, guarantee, or some other form of assurance.

(b) When construction has not commenced at the time a final decision by the Department of Industrial Relations or a court classifies all or part of the work covered by the bid or contract as a "public work," as defined in this chapter, the body that solicited the bid or awarded the contract shall rebid the "public work" covered by the contract as a "public work," any bid that was submitted and any contract that was executed for this work are null and void, and the contractor may not be compensated for any non-construction work already performed unless the body soliciting the bid or awarding the contract has agreed to compensate the contractor for this work.

(c) For purposes of this section:

(1) "Awarding body" does not include the Department of General Services, the Department of Transportation, or the Department of Water Resources.

(2) "Increased costs" includes, but is not limited to:

(A) Labor cost increases required to be paid to workers who perform or performed work on the "public work" as a result of the events described in subdivision (a).

(B) Penalties for a violation of this article for which the contractor is liable, and which violation is the result of the events described in subdivision (a).