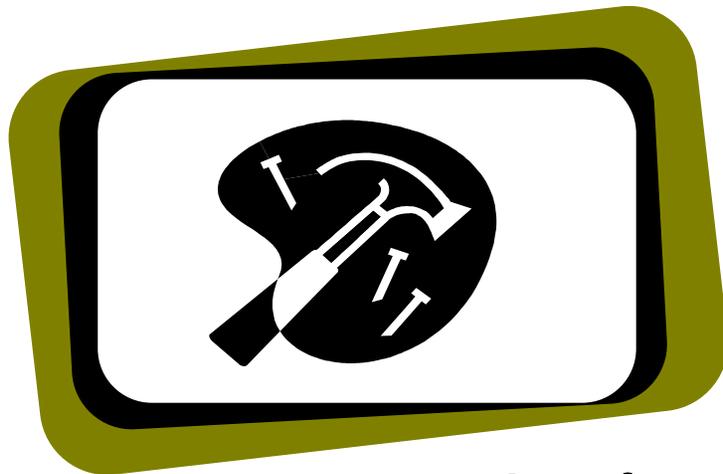




# Wage Compliance

Important Document



**City of Austin**

**Date: February 3, 2012**

Thank you for your interest in working with the City of Austin (COA) on a capital improvement project. This brochure will provide you with the data and information necessary for a contractor to do business with the City and comply with the City's Prevailing Wage requirements. Also included are web sites that provide additional data to assist when contracting with the City of Austin.

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## PURPOSE OF THIS BOOKLET

The purpose of this booklet is to provide contractors with information needed when doing business with the City of Austin (COA), specifically wage compliance issues.

## CONTRACTOR'S RESPONSIBILITIES

### Contractors' Requirements:

The prime contractor is responsible for ensuring that subcontractors pay contract wages to all workers. The prime contractor must keep payroll records up to date and ensure the compliance of all subcontractors. Prime contractors are required to inform employees of the required wage rates, pay no less than the stipulated wages to covered employees performing work on the construction site, and provide certification of such payment and related documentation to the COA.



### Subcontractor Expenditure Report (SUB-K):

The Sub-K provides contractor's name, project description and contract number and is populated with the subcontractors listed on the compliance plan submitted with the bid and approved by DSMBR. Contractor must change the Pay Application number located in the top right corner of the form when attaching it to each pay application and must sign and date this form. Contractor must not make any subcontractor changes, i.e. add or delete, without the prior approval of both the COA Project Manager and SMBR.

### Insurance:

Contractor must submit the Certificate of Insurance when insurance renewals are submitted with specific name of the project and contract number. The contract requires that insurance coverage be in place for the duration of this project to include the warranty period. Section 00650, Certificate of Insurance, is to be used to update insurance if it changes or when renewal is required during the course of this project. Contractor must verify that all parts of the certificate are filled out completely prior to submittal. The insurance industry's standard ACORD certificate is acceptable as long as it provides all of the information on the Section 00650 certificate.

### Certified Payrolls Reporting:



Upon request, the contractor shall submit to COA a copy of the specified weekly payrolls. For weeks in which no work is performed, the contractor shall indicate such in the payroll report for that week. The payrolls submitted shall contain the name, address, correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents), daily and weekly number of hours worked, overtime hours, deductions made, and actual wages paid for each worker on the project that week. (For federal projects, the SSN must be included on the weekly payrolls.) The contractor is responsible for the submission of copies of payrolls by all subcontractors. The Weekly Payroll Form may be produced by the use of any software desired, provided that all of the information is provided. Failure to submit the required records upon request or to make such records available may cause suspension of payments. COA has the primary responsibility for enforcement. Payrolls relating to this work shall be maintained during the term of the contract and preserved for a period of three years after completion of the project.

### **Statement of Compliance:**

The Statement of Compliance is to be completed and signed by the payroll officer. This must be attached to each week's payroll record.

### **Employee Certifications:**

Contractor and subcontractors shall complete and submit to COA an Employee Certification form for each worker. This form must be completed prior to the employee doing any work and the classification must match the type of work the employee performs. The form must be signed by the employee and by a witness in the presence of the employee. A new Employee Certification must be completed and submitted to COA when a worker's classification will change. If work performed by a worker is different than the trade classification agreed upon, the worker shall be paid for that work no less than the minimum prevailing wage for that specified trade. Identify the classification and wage agreed to, regardless if they are hourly or salaried, by every worker. When a worker performs more than one classification, a form must be completed for each classification and must be signed by that employee.

### **Prevailing Minimum Wage Rate and Fringe**

#### **Benefits (FBs):**

Work must be compensated at no less than the applicable wage determination wages and fringe benefits (FBs) for the classification of work actually performed. A contractor may elect to pay some or all of any required FBs in cash or some of the wages in FBs. Generally, a contractor can comply by paying any combination of wages and FBs that equals or exceeds the required wages and fringe benefits. Wages include only the amount paid for work performed and do not include any payments for



lodging, meals, or employee-furnished vehicles, gas, tools, or materials.

Fringe Benefits can include cash payments in place of FBs and irrevocable contributions (made at least quarterly) to bona fide fringe benefit plans or programs (pension funds, health plans, etc.). Contact Contract Administration at (512) 974-7181 if there is a question regarding credit for pro-rated holiday, vacation, or sick leave.

The contractor and subcontractors may be required to provide evidence of payment for fringe benefits listed on the "Statement of Compliance". Evidence may include, but not be limited to, proof of premium payments, proof of workers covered, certificates, and/or company cancelled checks.

#### **Overtime:**

Overtime compensation is required for all hours worked over 40 per week. Non-work hours such as holidays, vacation, and sick leave are not counted towards the 40 hours. No premium is required for night, weekend, or holiday work. The overtime rate is 1 1/2 times the regular rate of pay. The regular rate of pay, for this calculation, can be no less than the applicable rate - even if the contractor is paying part of the required wage rate in fringe benefits. In instances where required fringe benefits are paid in cash, the fringe benefit portion may be excluded from the overtime calculation. While fringe benefits are required to be paid on overtime hours, they are added after the calculation of "1 1/2 X regular rate."

Overtime wage violations may result in the assessment of liquidated damages in the sum of \$10 for each calendar day an employee is allowed to work in excess of a 40-hour workweek without payment of the required overtime compensation.

#### **Classifications:**

"Workers" are those employees whose duties are manual or physical in nature (including those individuals who use tools or perform the work of a trade). This definition applies regardless

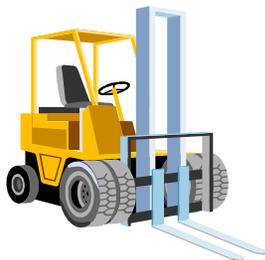
of any independent contractual relationship said to exist between the contractor and the worker. The term does not apply to individuals whose duties are primarily administrative, executive, or clerical.

Building Construction and Heavy/Highway Classifications shall conform to the current “Dictionary of Occupational Titles” as published by the U.S. Department of Labor (DOL).

A classification must be made based on the actual type of work a worker performed on the job. The work performed, not the “title,” determines the correct classification and wage rate. Each worker must be paid unconditionally, and without subsequent deduction or rebate on any account, full wages accrued and when due computed at rates not less than the wage rate on the wage decision for the type of work being performed regardless of the worker’s level of skill (exclusive of a bona fide apprentice currently registered in a DOL approved apprentice program).



When construction work requires that an employee perform work under multiple classifications or multiple wage scales, the employer must pay that worker (at least) the highest applicable prevailing wage or the employee payroll records must accurately set forth the times spent performing the work of each classification and under each scale. For those projects that involve both Building Construction and Heavy/Highway trades, the Heavy/ Highway wage rates may only be applied to workers when engaged in site work at least five (5) feet beyond the building.



### **Adding Classifications:**

Contractors are responsible for determining the appropriate classification necessary to perform the contract work. If a classification considered necessary for performance of the work is missing from the contract wage rate, the contractor must initiate a conformance request for an additional classification and wage rate.

Ideally, this determination should be made prior to bid submittal, in order to incorporate all needed classifications/trades in the solicitation.

The conformance request must be submitted to the COA on a “Request to Add Classification” form specifying the proposed



wage rate(s) and benefit rate(s). Supporting documentation must accompany request. Pending a response, the contractor may use proposed rates. For federally-funded projects, this request must be approved by the Department of Labor.

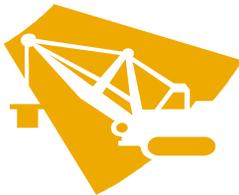
When the COA responds to the contractor with a wage determination for the additional wage classification, the contractor must provide the affected employees a copy of the wage rate and post it in the work area (with the applicable wage determination). If the determined rate is higher than the rate proposed by the contractor, the contractor shall pay back wages to make up the difference between the proposed rate and the determined rate retroactive to the worker’s start date for that classification. The COA will request written confirmation from the contractor that this liability has been paid in full.

### **Payroll Deduction Authorization Form:**

The contractor or subcontractor must not induce a worker to give up any part of their entitled compensation. Any contractor or subcontractor who does so is subject to civil or criminal prosecution in accordance with the Copeland Anti-kickback Act and may have their contract terminated or be debarred. A Payroll Deduction Authorization Form must be completed for any worker who has “other” deductions taken from the weekly salary.

### **Apprenticeship Programs:**

Individuals may be employed as apprentices if individually registered in a bona fide apprenticeship program with the DOL or a DOL approved program. Contractor shall furnish to COA individual registrations for all apprentices and evidence of the approved program that includes the appropriate ratios and wage rates. This must be done prior to designating any employee as an apprentice. The allowable ratio of apprentices to journeymen in any craft classification shall not be greater than the ratio stated in the registered apprenticeship program. This ratio must be determined on a daily basis. Apprentices are paid a percentage of the journeyman rates that increases as they progress in the program. If workers reported as apprentices have not been properly registered or are utilized at the job site in excess of the ratio to journeymen permitted under the approved program, they must be paid the applicable wage rates for workers performing in the classification of work they actually performed. This applies regardless of work classifications which may be listed on the submitted payrolls or the worker’s level of skill. Fringe benefits must be paid to the apprentices in compliance with the provisions of the apprenticeship program. If the plan is silent on how the apprentices are to be paid the fringe benefits, they must be paid the full fringe benefit amount listed on the wage determination.



### **Documentation:**

The records shall be open at all reasonable hours to inspection by the officers and agents of the COA as requested. Contractor shall provide copies of records as requested by the COA within deadline specified. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years after completion of the project.

### **ITEMS TO BE POSTED ON JOB SITE**

- **Prevailing Wage Rate Determination:** Must be posted on the job site where ALL employees can easily access it. Prime contractor is responsible for subcontractor compliance with Contract Section 00830 and use of the contract wage rates.
- **Notice to Employees Concerning Workers' Compensation in Texas:** Prime contractor must post with the wage scale, Notice 6 (English/Spanish), filling in the name of the commercial insurance company and the effective date of the policy.
- **City of Austin Contacts for Wage Questions:** General information for Contractor's / Subcontractor's employees which identifies who anyone may call for questions or regarding wage disputes.
- **Equal Employment Opportunity:** English and Spanish versions providing information on submitting inquiries or complaints.
- **Notice to All Employees Working on Federal or Federally Financed Construction Projects:** For Federal or Federally Financed projects only.

**Additional postings may be required. Refer to your contract.**

## RIGHT TO AUDIT

### Employee Interviews:

The contractor and subcontractors shall permit COA to interview workers during working hours on the job. No adverse action shall be taken by contractors or subcontractors against workers for communicating with COA. Worker interviews are confidential and are conducted without the presence of contractor / subcontractor representatives.



### Observations of Work Being Performed:

COA staff members will conduct site visits to observe work being performed. Contractor shall permit site visits in order for staff to complete these duties.

### Payroll Review and Findings:

Reviews on projects procured by the Contract Management Department are conducted by employees of the Contract Administration Division. They monitor the contractors to ensure compliance with contract requirements. The payrolls are reviewed to ensure that employees are paid according to the contract wage determination. Discrepancies are noted and a Preliminary Report of Findings is sent to the contractor. The contractor is given a deadline to respond to the findings and, if applicable, voluntarily correct the discrepancy. If the deadline is not met and the discrepancy is not corrected, future payments to the contractor are withheld. When discrepancies are not found or have been corrected, a final Report of Findings, signed by the staff person that conducted the review and the Contract Administration Supervisor, is sent to the contractor informing them of their compliance with the contract requirements. Copies of the final report are sent to the Project Manager.

### Withholding of Payments:

COA may withhold or cause to be withheld from contractor as much of the accrued payments as necessary to pay workers employed by contractor, subcontractors, or sub-subcontractors, the amount of wages required to comply with the contract. In the event of nonpayment of wages to workers, COA may, after written notice to contractor, take such action as may be necessary to suspend any further payments to contractor until the issue has been resolved. Payments may also be withheld if contractor fails to maintain weekly payroll reports and/or supporting documents or fails to provide copies of such documents upon request of COA within deadline specified.

### Penalties and Sanctions:

Contractors or subcontractors found to have disregarded their obligations to workers, or to have committed aggravated or willful violations while performing work on COA projects, may be subject to contract termination and debarment from future contracts for up to three years. In addition, contract payments may be withheld to satisfy liabilities for unpaid wages and liquidated damages that result from overtime violations. Falsification of certified payroll records or the requirement of kickback of wages may subject a contractor or subcontractor to civil or criminal prosecution, the penalty for which may be fines and/or imprisonment. A contractor or subcontractor(s) who violates Chapter 2258, Texas Government Code, Title 10 (or the Davis-Bacon Act on federally-funded projects) shall pay to the COA \$60 for each worker employed for each calendar day or part of the day that the worker is paid less than the wage rates stipulated in the contract. The COA shall use any money collected under this section to offset the costs incurred in the administration of Section 00830 of the contract. Confirmed adverse action taken by contractor against workers for providing information during an interview or investigation by the COA on wages received, may result in suspension or debarment from consideration of award of future COA contracts. Accrued contract amounts may also be withheld to satisfy the liability for unpaid wages and liquidated damages.

## Frequently Asked Questions:

*When do I begin to send payroll information?* Unless the project is federally funded, do not send any payroll information until you receive a letter from Contract Administration asking for the documentation. **If the project is federally funded, all payroll information must be forwarded to the COA immediately after construction begins, certified payrolls must be submitted within one week of each payday, and employee certifications must be provided no later than submittal of the first payroll bearing the employee's name.**

**Note: On federally funded projects, all employees must be paid no less than once a week.**

*Where can I get new forms?* You can call one of the staff members listed below and all forms will be provided. Also, all prime contractors are provided with hardcopies of all forms during the preconstruction meeting and emailed soft copies of the forms after the preconstruction meeting.

*When should the posters be displayed?* Posters must be displayed immediately upon the start of construction and must be accessible to all employees at all times. The staging area for the project is an ideal location. Posters must not be displayed inside a trailer.

*Do I need to provide an Employee Certification form and a Payroll Deduction Authorization Form for each employee?* All workers on the job site must have an Employee Certification on record with the prime contractor. A Payroll Deduction Authorization Form is needed for those workers that have "other" deductions listed on the weekly payrolls. Workers who do not have "other" deductions do not need to complete a Payroll Deduction Authorization Form. If you have other questions, contact the personnel listed below.

*Where may I get a copy of the latest wage determination?* The latest wage determination is located at the web site for the City of Austin under Contract Management. The wage determination for a specific project is located in the contract under section 00830.

## References:

- Davis-Bacon Act (<http://www.dol.gov>)
- Texas Statute (<http://tlo2.tlc.state.tx.us>)
- City of Austin Ordinance (<http://www.austintexas.gov>)

## Who to Contact:

**Contract Management Department**  
Contract Administration Division  
505 Barton Springs Road, Suite 1045  
Austin, Texas 78704

**Andrea Pimentel**  
**Contract Compliance Specialist**  
Phone Number (512) 974-9377  
Fax Number (512) 974-7297  
[andrea.pimentel@austintexas.gov](mailto:andrea.pimentel@austintexas.gov)

**Russell Kyle**  
**Contract Compliance Specialist Senior**  
Phone Number (512) 974-1404  
Fax Number (512) 974-7297  
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