

## 📖 **SEC. 6.22. PUBLIC WORK CONSTRUCTION CONTRACT TERMS AND WORKING CONDITIONS.**

All construction contracts awarded by the City and County of San Francisco shall contain the following minimum terms and conditions:

(A) **Bonds.** Before the execution of any contract for public work or improvement in excess of \$25,000, the department head authorized to execute such contracts shall require the successful bidder to file corporate surety bonds for the faithful performance thereof and to guarantee the payment of wages for services engaged and of bills contracted for material, supplies and equipment used in the performance of the contract. The bond shall be for a sum not less than 100 percent of the award.

The City and County of San Francisco, acting through its Human Rights Commission ("HRC"), intends to provide guarantees to private bonding assistance companies and financial institutions in order to induce those entities to provide required bonding and financing to eligible contractors bidding on and performing City public work contracts. This bonding and financial assistance program is subject to the provisions of Administrative Code [Chapter 14B](#).

(B) **Insurance.** All construction contracts awarded under this Chapter must conform to the insurance requirements established by the Risk Manager. The Risk Manager shall develop uniform insurance requirements for City contracts subject to this Chapter and shall publish such requirements in the Risk Manager's Manual. The Risk Manager shall review and update such insurance requirements on an annual basis.

Every contractor and subcontractor shall comply with the provisions of California Labor Code section 3700. Prior to commencing the performance of work under any public work contract, the contractor and all of its subcontractors shall file with the awarding department a certificate of insurance against liability for workers compensation or proof of self-insurance in accordance with the provisions of the California Labor Code.

(C) **Indemnification.** All construction contracts awarded under this Chapter shall require that the contractor fully indemnify the City and County to the maximum extent provided by law, such that each contractor must save, keep, bear harmless and fully indemnify the City and County and any of its officers or agents from any and all liability, damages, claims, judgments or demands for damages, costs or expenses in law or equity that may at any time arise.

This indemnification requirement may not be waived or abrogated in any way for any contract without the recommendation of the City's Risk Manager and the express permission and approval of the Board of Supervisors.

(D) **Assignment.** No contract shall be assigned except upon the recommendation of the department head concerned and with the approval of the Mayor or the Mayor's

designee, relative to the department under the Mayor's jurisdiction, or the approval of the board or commission concerned for departments not under the Mayor.

(E) **Prevailing Wages.**

(1) **Generally.** All contractors and subcontractors performing a public work or improvement for the City and County of San Francisco shall pay its workers on such projects the prevailing rate of wages as provided below. For the purpose of prevailing wage requirements only, the definition of a public work shall include those public works or improvements defined in the foregoing section 6.1 of this Chapter and shall also include (a) any trade work performed at any stage of construction (including preconstruction work) and (b) any public work paid for by the City and County of San Francisco with "the equivalent of money" under the meaning of Labor Code section 1720(b).

(2) **Leased Property Included.** For the limited purposes of this subsection, a "public work or improvement" also means and includes any construction work done under private contract when all of the following conditions exist:

(a) The construction contract is between private persons; and

(b) The property subject to the construction contract is privately owned, but upon completion of the construction work will be leased to the City and County of San Francisco for its use; and

(c) Either of the following conditions exist: (1) The lease agreement between the lessor and the City and County of San Francisco, as lessee, is entered into prior to the construction contract, or (2) The construction work is performed according to the plans, specifications, or criteria furnished by the City and County of San Francisco, and the lease agreement between the lessor and the City and County of San Francisco as lessee, is entered into during, or upon completion, of the construction work.

(3) **Determination of the Prevailing Wage.** It shall be the duty of the Board of Supervisors, from time to time and at least once during each calendar year, to fix and determine the prevailing rate of wages as follows:

On or before the first Monday in November of each year, the Civil Service Commission shall furnish to the Board of Supervisors data as to the highest general prevailing rate of wages of the various crafts and kinds of labor as paid in private employment in the City and County of San Francisco, plus "per diem wages" and wages for overtime and holiday work. The Civil Service Commission shall provide the Board of Supervisors data for "per diem wages" pursuant to California Labor Code sections 1773.1 and 1773.9, as amended from time to time. The Board of Supervisors shall, upon receipt of such data, fix and determine the prevailing rate of wages. The prevailing rate of wages as so fixed and determined by the Board of Supervisors shall remain in force and shall be deemed to be the highest general prevailing rate of wages paid in private employment for

similar work, until the same is changed by the Board of Supervisors. In determining the highest general prevailing rate of wages per diem wages and wages for overtime and holiday work, as provided for in this section, the Board of Supervisors shall not be limited to the consideration of data furnished by the Civil Service Commission, but may consider such other evidence upon the subject as the Board shall deem proper and thereupon base its determination upon any or all of the data or evidence considered.

In the event that the Board of Supervisors does not fix or determine the highest general prevailing rate of wages in any calendar year, the rates established by the California Department of Industrial Relations for such year shall be deemed adopted.

(4) **Specifications to Include Wage Rate.** The department head authorized to execute a construction contract under this Chapter shall include in the contract specifications, or make available in the offices of the department or at the job site, a detailed statement of the prevailing rate of wages as fixed and determined by the Board of Supervisors at the time the department issued the Advertisement For Bids on the contract. The contractor shall agree to pay to all persons performing labor in and about the public work or improvement the highest general prevailing rate of wages as determined pursuant to this Chapter, including wages for holiday and overtime work. If the specifications do not include the prevailing rate of wages, the specifications shall include a statement that copies of the prevailing rate of wages as fixed and determined by the Board of Supervisors are on file at the department's principal office or at the job site and shall be made available to any interested party on request.

(5) **Subcontractors Bound by Wage Provisions.** Every contract for any public work or improvement shall also contain a provision that the contractor shall insert in every subcontract or other arrangement which he or she may make for the performance of any work or labor on a public work or improvement. This provision shall be that the subcontractor shall pay to all persons performing labor or rendering service under said subcontract or other arrangement the highest general prevailing rate of wages as fixed and determined by the Board of Supervisors for such labor or services.

(6) **Records to be Kept by Contractors and Subcontractors.** Every public works contract or subcontract awarded under this Chapter shall contain a provision that the contractor shall keep, or cause to be kept, for a period of four years from the date of substantial completion of a public work, payrolls and basic records including time cards, trust fund forms, apprenticeship agreements, accounting ledgers, tax forms and superintendent and foreman daily logs for all trades workers performing work at or for a City and County of San Francisco public work or improvement. Such records shall include the name, address and social security number of each worker who worked on the project, including apprentices, his or her classification, a general description of the work each worker performed each day, the rate of pay (including rates of contributions for, or costs assumed to provide fringe benefits), daily and weekly number of hours worked, deductions made and actual wages paid. Every subcontractor who shall undertake the performance of any part of a public work or improvement shall keep a like record of each person engaged in the execution of the subcontract.

The contractor shall maintain weekly certified payroll records for submission to the awarding department as required. The contractor shall be responsible for the submission of payroll records of its subcontractors. All certified payroll records shall be accompanied by a statement of compliance signed by the contractor indicating that the payroll records are correct and complete, that the wage rates contained therein are not less than those determined by the San Francisco Board of Supervisors and that the classifications set forth for each employee conform with the work performed.

All such records as described in this section shall at all times be open to inspection and examination of the duly authorized officers and agents of the City and County of San Francisco, including representatives of the Office of Labor Standards Enforcement.

Should the department head responsible for the public work or the Labor Standards Enforcement Officer determine that a contractor or subcontractor is not in compliance with the requirements of this subsection, the department head or the Labor Standards Enforcement Officer shall issue written notification to the contractor or subcontractor mandating compliance within not fewer than ten calendar days from the date of the notification. Should the contractor or subcontractor fail to comply as required in the notification, the department head who executed the contract or the Labor Standards Enforcement Officer may impose a penalty of \$25.00 for each calendar day of noncompliance, or portion thereof, for each worker. Upon the request of the responsible department head or the Labor Standards Enforcement Officer, the Controller shall withhold these penalties from progress payments then due or to become due.

(7) **Additional Required Contract Provisions.** Every public works contract shall contain provisions stating that (1) the contractor will cooperate fully with the Labor Standards Enforcement Officer and other City employees and agents authorized to assist in the administration and enforcement of the prevailing wage requirements and other labor standards imposed on public works contractors by the Charter and [Chapter 6](#) of the San Francisco Administrative Code; (2) the contractor agrees that the Labor Standards Enforcement Officer and his or her designees, in the performance of their duties, shall have the right to engage in random inspections of job sites and to have access to the employees of the contractor, employee time sheets, inspection logs, payroll records and employee paychecks; (3) the contractor shall maintain a sign-in and sign-out sheet showing which employees are present on the job site; (4) the contractor shall prominently post at each job-site a sign informing employees that the project is subject to the City's prevailing wage requirements and that these requirements are enforced by the Labor Standards Enforcement Officer; and (5) that the Labor Standards Enforcement Officer may audit such records of the contractor as he or she reasonably deems necessary to determine compliance with the prevailing wage and other labor standards imposed by the Charter and this Chapter on public works contractors. Failure to comply with these requirements may result in penalties and forfeitures consistent with California Labor Code section 1776(g), as amended from time to time.

(8) **Non-compliance with Wage Provisions**

(a) **Penalty and Forfeiture.** Any contractor or subcontractor who shall fail or neglect to pay to the several persons who shall perform labor under any contract, subcontract or other arrangement on any public work or improvement as defined in this Chapter the highest general prevailing rate of wages as fixed by the Board of Supervisors under authority of this Chapter, shall forfeit; and, in the case of any subcontractor so failing or neglecting to pay said wage, the original contractor and the subcontractor shall jointly and severally forfeit to the City and County of San Francisco back wages due plus the penal sum of \$50.00 per day for each laborer, workman or mechanic employed for each calendar day or portion thereof, while they shall be so employed and not paid said highest general prevailing rate of wages, and in addition shall be subject to the penalties set forth in Article V of this Chapter, including debarment.

(b) **Enforcement.** It shall be the duty of the officer, board or commission under whose jurisdiction said public work or improvement is being carried on, made or constructed, when certifying to the Controller any payment which may become due under said contract, to deduct from said payment or payments the total amount of said forfeiture provided for in this subsection. In doing so, the department head must also notify in writing the Labor Standards Enforcement Officer of his/her action. The Labor Standards Enforcement Officer may also upon written notice to the department head who is responsible for the project, certify to the Controller any forfeiture(s) to deduct from any payment as provided for in this Subsection [6.22\(E\)\(8\)](#). Certification of forfeitures under this subsection shall be made only upon an investigation and audit by the responsible department head or the Labor Standards Enforcement Officer and upon service of written notice to the contractor that includes identification of the grounds for the forfeiture or forfeitures ("Certification of Forfeiture"). The audit supporting the forfeiture shall be appended to the Certification of Forfeiture, but failure to append such documentation shall not invalidate the Certification. Service of the Certification of Forfeiture shall be made by United States mail and the date of service shall be the date of mailing. The Controller, in issuing any warrant for any such payment, shall deduct from the amount which would otherwise be due on said payment or payments the amount of said forfeiture or forfeitures as so certified.

(c) **Recourse Procedure.** A contractor and/or a subcontractor may appeal from a Certification of Forfeiture. The Controller shall adopt and maintain rules and regulations for any appeal under this Subsection [6.22\(E\)\(8\)\(c\)](#), which rules shall generally include the following parameters for efficient and effective due process:

(i) Any Appeal from Certification of Forfeiture shall be filed in writing by the contractor and/or subcontractor (referred to in this Subsection [6.22\(E\)\(8\)\(c\)](#), whether singular or plural, as the "Appellant") within 15 days of the date of service of the Certification of Forfeiture. Appellant shall file the Appeal from Certification of Forfeiture with the City Controller and serve a copy on the Labor Standards Enforcement Officer. Failure by the contractor or subcontractor to submit a timely, written Appeal from Certification of Forfeiture shall constitute concession to the forfeiture, and the forfeiture shall be deemed final upon expiration of the 15-day period.

(ii) The Office of Labor Standards Enforcement shall promptly afford Appellant an opportunity to meet and confer in good faith regarding possible resolution of the Certification of Forfeiture in advance of further proceedings under this Subsection [6.22\(E\)\(8\)\(c\)](#), with the intention that such meeting occur within 30 days of the date the Appeal from Certification of Forfeiture is filed.

(iii) After the expiration of 30 days following the date the Appeal from Certification of Forfeiture is filed, any party may request in writing, with concurrent notice to all other parties, that the Controller appoint a hearing officer to hear and decide the appeal. If no party requests appointment of a hearing officer, the Certification of Forfeiture shall be deemed final on the 60th day after the date the Appeal from Certification of Forfeiture is filed.

(iv) Within 15 days of receiving a written request for appointment of a hearing officer under Section [6.22\(E\)\(8\)\(c\)\(iii\)](#), the Controller shall appoint an impartial hearing officer and immediately notify the enforcing official and Appellant, and their respective counsel or authorized representative if any, of the appointment. The appointed hearing officer shall be an Administrative Law Judge with at least ten years experience with the City and not less than two years experience in labor law, prevailing wage, and/or wage and hour matters; or shall be an attorney with knowledge and not less than five years' experience in labor law, prevailing wage, and/or wage and hour matters.

(v) The hearing officer shall promptly set a date for a hearing. The hearing must commence within 45 days of the date the Controller notice of the hearing officer appointment, and conclude within 75 days of such notice. The hearing officer shall conduct a fair and impartial evidentiary hearing in conformance with the time limitations set forth in this subsection [6.22\(E\)\(8\)\(c\)](#) and in the rules and regulations, so as to avoid undue delay in the resolution of any appeal. The hearing officer shall have the discretion to extend the times under this subsection [6.22\(E\)\(8\)\(c\)](#), and any time requirements under the rules and regulations, only upon a showing of good cause.

(vi) Appellant has the burden of proving by a preponderance of the evidence that the basis for the Certification of Forfeiture is incorrect, including any back wage and penalty assessments that are at issue in the appeal.

(vii) Within 30 days of the conclusion of the hearing, the hearing officer shall issue a written decision affirming, modifying, or dismissing the forfeiture. The decision of the hearing officer shall consist of findings and a determination. The hearing officer's findings and determination shall be final.

(viii) Appellant may appeal a final determination under this section only by filing in the San Francisco Superior Court a petition for a writ of mandate under California Code of Civil Procedure, section 1084, et seq., as applicable and as may be amended from time to time.

(d) **Distribution of Forfeiture.** The Controller shall withhold any forfeiture as provided in the foregoing paragraphs until such time as either the contractor or subcontractor has conceded to the forfeiture or, in the event of an appeal, there is a determination no longer subject to judicial review. The Controller shall then distribute the amounts withheld in the following order: (1) the Labor Standards Enforcement Officer shall make best efforts to distribute back wages withheld to the individual workers identified as not having been paid the proper wage rate; (2) the penal sums provided for above shall inure to the benefit of the general fund of the City and County of San Francisco; (3) the Controller shall hold the balance of any back wages in escrow for workers whom the Labor Standards Enforcement Officer, despite his/her best efforts, cannot locate. In the event back wages are unclaimed for a period of three years, the Controller shall undertake administrative procedures for unclaimed funds in conformance with Government Code Section 50050, et seq., as may be amended from time to time.