

# Legal Update for Public Works Officers League of California Cities

Presented by: Deborah Wilder, President

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- *The information provided is of a general nature and is not intended to be legal advice.*
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## AB 2249- Increasing Competitive Bidding Threshold

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- Uniform Public Construction Cost Accounting Act Increases Bidding Thresholds as follows:
  - Contracts of \$60,000 or less may be performed by employees of public agency;
  - Contracts of \$200,000 or less can be awarded via informal procedures;



## AB 2249- Increasing Competitive Bidding Threshold

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- Contracts over \$200,000 must be let via formal bidding procedures; and
- If all bids are over \$200,000, agency may award contract for \$212,500 or less if it determines cost estimate of public agency was reasonable,



## AB 2762 Increases Small Business Goal

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- Increases small business goal available to all public agencies to a maximum of 7% with a maximum financial value of \$150,000
- Obligation is to meet goal or demonstrate good faith effort



## AB 2762 Increases Small Business Goal

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- Expanded goal applies to any public entity in the following counties:
  - Alameda,
  - Contra Costa
  - Lake
  - Los Angeles
  - Marin
  - Napa
  - San Francisco
  - San Mateo
  - Santa Clara
  - Solano
  - Sonoma



## AB 2762 Increases Small Business Goal

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- If more than one preference adopted in single bid (Small Business, Disabled Veterans Business or Social Enterprise)
  - An agency in the counties set forth previously can establish a goal of 15% with a maximum financial value of \$200,000
  - Obligation is to meet goal or demonstrate good faith effort



## SB 721 – Inspection of Elevated Entry Structures

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- Requires inspection of balconies and other elevated structures for:
  - Buildings of 3 or more multi-family units
  - Report to be provided to owner within 45 days of completion of inspection
  - Report to address load bearing capacity and water proofing integrity



## SB 721 – Inspection of Elevated Entry Structures

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- Deadlines for repairs
- Fines for failure to comply
- Local Agency can recover enforcement costs.
- Inspections must be completed by January 1, 2025
- Subsequent inspections every 6 years



## Labor Code Section 1720.9 Concrete Deliveries

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- Concrete Deliveries for contracts awarded after July 1, 2016
- Final Court of Appeals ruling September 2018.
- Special Prevailing Wage Rate by county
- Based on location of concrete plant not location of project



## Labor Code Section 1720.9 Concrete Deliveries

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- Prevailing wages start at plant and ends when truck is cleaned
- Requires written contract
- Concrete Companies must submit:
  - Certified payrolls
  - Proof of any fringe benefits claimed to meet prevailing wage
  - Written time records



## SB 96 Prevailing Wage Requirements

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- PWC-100s to be filed for projects over \$15,000 for Maintenance and over \$25,000 for Construction
  - Must be filed within 30 days of award but not later than first day work is performed on the project
  - Fines of \$100 a day for late filing



## SB 96 Prevailing Wage Requirements

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- Emergency Work as defined by Public Contract Code allows PWC-100 to be filed:
  - 30 days after work begins on the project but not later than completion of project, whichever is earlier.



## SB 96 Prevailing Wage Requirements

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- All entities performing covered prevailing wage work on the project which is greater than \$15,000 for maintenance or over \$25,000 for construction must be registered as a “public works contactor” prior to bid.



## SB Prevailing Wage Requirements

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- This includes:
  - Contractors
  - Subcontractors
  - Owner-operators
  - Surveyors
  - Inspectors
  - Material Testing
  - Employee Staffing Agencies
  - Trucking



## SB Prevailing Wage Requirements

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- Fines imposed by the California Department of Industrial Relations
  - \$100 per day to the offending contractor
  - \$100 per day to the prime contractor
  - \$100 a day to the awarding agency





## Prevailing Wages Mandated Contract Clauses

The call for bids and contract documents (including purchase orders) must include the following:

- No contractor or subcontractor may be listed on a bid proposal for a public works project unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5 [with limited exceptions from this requirement for bid purposes only under Labor Code section 1771.1(a).
- No contractor or subcontractor may be awarded a contract for public work on a public works project unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5.
- This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.



## Prevailing Wages Mandated Contract Clauses

The awarding body shall cause to be inserted in every public works contract a clause providing that:

- Every contractor will be required to secure the payment of workers compensation to his or her employees. Labor Code Section 1860.
- The contractor shall post the applicable prevailing wage rate on the project site. Labor Code Section 1771.4
- The project is subject to prevailing wages. The applicable the wage rates are available at [www.dir.ca.gov](http://www.dir.ca.gov) and the agency also has access to the applicable prevailing wage rate at City's Department of Public Works Department.



## Special Thank You

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- Smith Currie & Hancock
  - Daniel McLennon
- Gordon Rees Scully Mansukhani, LLP,
  - Brenda Radmacher



## Credentials- Deborah Wilder

- 35+ years as a practicing attorney
- Author of *What Every Contractor Should Know About Prevailing Wages* © Jan 2010; 2<sup>nd</sup> Edition 2015
- Author of *AGC of America's Davis Bacon Compliance Manual 5<sup>th</sup> Edition* © 2018
- Author of *Davis Bacon Handbook for Public Agencies* © 2013; updated © 2016.
- Nationally recognized speaker on the subject of state and federal prevailing wage compliance:
  - Workshops, Webinars, and presentations before World of Concrete, APWA-American Public Works Association, CLE Workshops for Continuing Legal Education, Webinars with AGC, ABC, Builders Exchanges and more.



# Questions?

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**Thank You**

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