

CHAPTER 9:

PUBLIC WORKS/CONSTRUCTION AGREEMENTS

Note that the definition of “public project” for bidding purposes differs from the definition of “public project” for prevailing wages purposes. PCC 22002 defines a “public project” subject to public bidding as any of the following:

- Construction, reconstruction, erection, alteration, renovation, improvement, demolition, and repair work involving any publicly owned, leased, or operated facility.
- Painting or repainting of any publicly owned, leased, or operated facility.
- “Public project” does not include maintenance work. “Maintenance work” includes (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.
- In certain circumstances, it may be difficult to determine whether a project should be considered a public works project or maintenance work. In such cases, the project manager may request a determination from the City Attorney.

Examples of projects in this category are contracts for new street construction, major street resurfacing, intersection improvements, construction or renovation of a public facility, parking lot construction, sidewalk construction, and traffic signal installation.

Dollar Threshold	Requirements	Requisition Approval/Authority
\$0 –\$5,000	<p>Provide a detailed scope of work to potential contractors and obtain one (1) written quotation which includes prevailing wage rates</p> <p>Prevailing Wage rates required for work of \$1,000 and greater</p> <p>Requisition/PO and one (1) written quotation required for amount over \$1,000</p> <p>Contract and insurance validation is not required for services between \$1,001-\$5,000 unless deemed as necessary by Risk Management</p> <p>Valid Contractor License required</p>	<p>Requisition Approval: Department Head/Designee approval required</p> <p>Authority: Department Head/Designee approval required</p> <p>Notice of contract award through DIR's PWC-100 NOT REQUIRED</p>
\$5,001-\$10,000	<p>Provide a detailed scope of work to potential contractors and obtain one (1) written</p> <p>Prevailing Wage rates required for work of \$1,000 and greater</p> <p>Contract and insurance required for projects greater than \$5,000 as per contract and Risk Management recommendations</p> <p>Valid Contractor License required</p>	<p>Requisition Approval: Department Head/Designee approval required</p> <p>Authority: Department Head/Designee approval required</p> <p>Notice of contract award through DIR's PWC-100 NOT REQUIRED</p> <p>quotation which includes prevailing wage rates</p>

Dollar Threshold	Requirements	Requisition Approval/Authority
\$10,001-\$60,000	<p>Provide detailed scope of work to potential contractors and obtain three (3) written quotations which include prevailing wage rates</p> <p>Requisition/PO, scope of work and contract required</p> <p>Valid Contactor License required</p> <p>Must provide proof of registration (prime and all sub-contractors) with the DIR unless under the small project exemption</p> <p>Labor/Material and Performance Bonds required for all contracts greater than \$25,000</p> <p>Insurance required as per contract and Risk Mgmt. recommendations</p> <p>Prevailing Wage rates required</p>	<p>Requisition Approval: Department Head/Designee approval required</p> <p>Authority: City Manager/Designee signature required on all contracts from \$10,000-\$50,000</p> <p>City Council approval required for contracts greater than \$50,000</p> <p>Project Managers are required to submit notice of contract award through DIR's PWC-100 system on projects that fall outside of the small project exemption. The small project exemption applies for all public works projects that do not exceed: -\$25,000 for new construction, alteration, installation, demolition or repair -\$15,000 for maintenance</p>
\$60,001-\$200,000	<p>Informal Bid Process Required per GGMC § 2.52.030</p> <p>Requisition/PO, detailed scope of work/plans and contract required</p> <p>Notice Inviting Bids Required</p> <p>Valid Contractor License required</p> <p>Must provide proof of registration (prime and all sub-contractors) with the DIR: Department of Industrial Relations</p> <p>Labor/Material and Performance Bonds required</p> <p>Insurance required as per contract and Risk Management recommendations</p> <p>Prevailing Wage rates required</p>	<p>Requisition Approval: Department Head/Designee approval required</p> <p>Authority: City Council approval required</p> <p>Contracts AND Purchase Orders for all public works projects that fall outside of the small project exemption must be reported to the DIR by the Project Manager within 30 days of the award/approval date, or before beginning any work.</p>

Dollar Threshold	Requirements	Requisition Approval/Authority
\$200,001 and greater	Formal Bid Process Required per PCC 22037 Requisition/PO, Scope of Work/Plans and Contract required Notice Inviting Bids Required Valid Contractor License required Must provide proof of registration (prime and all sub-contractors) with the DIR: Department of Industrial Relations Labor/Material and Performance Bonds required Insurance required as per contract and Risk Management recommendations Prevailing Wage rates required	Requisition Approval: Department Head/Designee approval required Authority: City Council approval required Contracts AND Purchase Orders for all public works projects that fall outside of the small project exemption must be reported to the DIR by the Project Manager within 30 days of the award/approval date, or before beginning any work.

9.1 UNIFORM PUBLIC CONSTRUCTION COST ACCOUNTING ACT

The City of Garden Grove has adopted the following bid procedures for public works construction contracts pursuant to the Uniform Public Construction Cost Accounting Act, Public Contract Code Section 22000 et seq. The Uniform Public Construction Cost Accounting Act is a program that was created in 1983 which allows local agencies to perform public project work up to \$60,000 with its own work force if the agency elects to follow the cost accounting procedures set forth in the Cost Accounting Policies and Procedures Manual of the California Uniform Construction Cost Accounting Commission. The Act was codified at Public Contracts Code Sections 22000 through 22045.

A governing body must elect by resolution to become subject to the Act and file a copy of the resolution with the State Controller's Office (PCC 22030). The City of Garden Grove, by Resolution No. 8677-05, elected to become subject to the Uniform Cost Accounting Procedures. Public contracts are subject to the Public Contract code Sections 22000-22045 and the "Public Works Construction Bid Procedure" of Chapter 2.52 of the City of Garden Grove Municipal Code.

In addition, the Act provides for alternative bidding procedures when an agency performs public project work by contract.

A. Public projects of \$60,000 or less may be performed by its own forces, negotiated contract, or by purchase order (PCC 22032(a)).

B. Public projects of \$200,000 or less may be processed via contract by the informal procedures set forth in the Act (PCC 22032(b)). These informal procedures are codified at Section 2.52.030 of the Garden Grove Municipal Code.

C. Public projects of more than \$200,000 shall be processed via contract by formal bidding procedures (PCC 22032(c)). The formal bidding procedures are specified in PCC 22037.

9.2 PUBLIC WORKS PROJECTS up to \$5,000

One (1) informal quote, containing prevailing wage, shall be obtained for Public Works projects in the amount of \$1,001-\$5000. Contract and insurance validation is not required for projects in the amount of \$1,001-\$5,000 unless deemed as necessary by Risk Management. Risk Management should review the Scope of Work to make this determination before proceeding. A requisition or purchase orders is not required for public works projects in the amount of \$1,000 or less, however prevailing wages apply to work of \$1,000 and greater. Notice of contract award through DIR's PWC-100 is not required.

9.3 PUBLIC WORKS PROJECTS of \$5,001-\$10,000

One (1) informal quote, containing prevailing wage, shall be obtained for Public Works projects in the amount of \$5,001-\$10,000. A contract and insurance are required for projects as per contract and Risk Management recommendations. Notice of contract award through DIR's PWC-100 is not required.

9.4 PUBLIC WORKS PROJECTS of \$10,001-\$60,000

Public Works projects in the amount of \$60,000 or less may be performed by the employees of the City of Garden Grove in accordance with section 22032 of the Public Contract Code.

At least three (3) quotes/estimates, containing prevailing wage, shall be obtained for Public Works projects that range from \$10,001 to \$60,000. A contract and insurance are required. Bonds are required for public works contracts greater than \$25,000. The contract will be awarded to the lowest bidder. In the event that the lowest bidder is unable to meet the City's requirements, a fourth informal bid may be required to meet the three informal bid requirement. Notice of contract award through DIR's PWC-100 may be required based on contract amount.

9.5 PUBLIC WORKS PROJECTS of \$60,001-\$200,000 (INFORMAL BID PROCEDURE)

Public Works projects in an amount of \$60,001 to \$200,000 must follow the requirements of the Public Contract Code Section 22034 and Section 2.52.030 of the Garden Grove Municipal Code. The Purchasing division shall complete an informal bid procedure. Award shall be made by the City Manager, except for contracts that exceed \$50,000, which must be made by the City Council.

Section 22033 of the Public Contract Code states, "It shall be unlawful to split or separate into smaller work orders or projects any project for the purpose of evading

the provisions of this article requiring work to be done by contract after competitive bidding.”

The Purchasing Division shall maintain a list of qualified contractors, identified according to categories of work in accordance with Section 22034 (a) of the Public Contract Code. All contractors in the category of qualified contractors list shall be mailed a notice inviting bids.

The notice shall:

- A. Describe the project in general terms.
- B. Describe how to obtain more detailed information about the project.
- C. State the time and place for the submission of bids.

Pursuant to California Public Contracting Code section 22034(a)(1), notice inviting bids shall be mailed to contractors and construction trade journals no less than 10 days prior to bid opening.

All contracts that do not fall under the Small Project Exemption must be registered with the Department of Industrial Relations.

9.6 PUBLIC WORKS/CONSTRUCTION PROJECTS of \$200,001 and greater (FORMAL BID PROCEDURE)

Public Works projects in the amount of \$200,001 and greater are subject to a formal bidding process as required by sections 22032(c) and 22037 of the Public Contract Code and Section 2.52.010 of the Garden Grove Municipal Code. Plans and Specifications are required. Award shall be made by the City Council.

Notifications of the formal bid, in accordance with Section 22037 of the Public Contract Code, shall be published twice in a local newspaper at least 14 calendar days before the opening of the bids.

The formal bid notification shall include:

- A. State the time and place for receiving and opening of sealed bids.
- B. Distinctly describe the project (plans, specifications, etc.).

The notice inviting formal bids should be mailed to construction trade journals at least 10 days prior to the bid opening. When time permits, it is recommended that 30 days prior notice inviting formal bids be mailed to construction trade journals in order to foster more competition.

Notifications to trade journals shall include:

- A. Project title and contract number
- B. Date, time, and place for receiving bids
- C. City’s address and contact information
- D. Brief description of work to be done
- E. Bond requirements
- F. Where plans may be obtained

G. Deposit information if one is required and whether or not the deposit is refundable

In accordance with Section 22038(c) of the Public Contract Code, if no bids are received through the formal or informal procedure, the project may be performed by the employees of the City or by negotiated contract.

In accordance with Section 22038(a) of the Public Contract Code, the City may reject all bids presented if the City, prior to rejecting all bids and declaring that the project can be more economically performed by employees of the agency, furnishes a written notice to the apparent low bidder. If bids are to be rejected, notification to the bidders informing them of the agency's intention to reject the bids shall be mailed at least two business days prior to the hearing at which the agency intends to reject the bid.

If after the first invitation of bids where all bids were rejected, after reevaluating its cost estimates or scope of the project, the City shall have the option of either of the following:

- A. Abandon the project or re-advertise
- B. Declare that the project can be performed by employees. This requires a Resolution approved by four-fifths of the City Council.

In accordance with Section 22038(b) of the Public Contract Code, if the contract is awarded, it shall be awarded to the lowest responsible bidder. If two or more bids are the same and the lowest, the City may accept the one of its choice.

All contracts that do not fall under the Small Project Exemption must be registered with the Department of Industrial Relations.

9.7 CHANGE ORDERS

Prior to submitting a Change Order request, the administering department is responsible for ensuring that adequate budget appropriations are available to accommodate the additional expenditure.

If sufficient funds are not available to accommodate the additional expenditure, the Change Order request will be rejected. The requisitioning department is responsible for requesting budget transfers if applicable and/or seeking approval for additional appropriations from City Council when necessary.

The City Manager or his/her designee may authorize a change or cumulative changes to a Public Works contract within the approved scope of work, as long as the resultant cost does not exceed 10% of the awarded contract amount. Approved changes to the project include any emergency work or additional work that is directly related to the completion of the original project.

A change or cumulative changes to a Public Works contract greater than 10% of the awarded contract amount must be approved by the City Council, provided that the progress of a public project shall not be interrupted if it would create an emergency situation.

The available balances on contracts must be used within the term specified. Once the contract expires, Purchasing staff will verify with the department that there are no pending payments before closing out the purchase order. Once the purchase order is closed, any remaining balances will be automatically disencumbered, and cannot be carried over into future purchase orders. Capital projects may be an exception and will be reviewed on a case by case basis.

9.8 PREVAILING WAGE RATES AND PUBLIC WORKS PROJECTS

Labor Code 1771 requires the payment of prevailing wages for all public works projects greater than \$1,000. The definition of "public works" under the Labor Code differs from the definition "public works" under the bidding statutes. For purposes of the payment of prevailing wages under Labor Code 1771 and 1720, "public works projects" include construction, re-construction, alteration, renovation, erection, demolition, improvements, installation, or repair work done under contract and paid for in whole or in part out of public funds, to a publicly owned, leased, or operated facility. "Construction" includes work performed during the design and pre-construction phases of construction, including, but not limited to, inspection and land surveying work, and work performed during the post-construction phases of construction, including, but not limited to, all cleanup work at the jobsite. "Installation" includes, but is not limited to, the assembly and disassembly of freestanding and affixed modular office systems. Under Labor Code 1771, prevailing wages applies to contracts let for maintenance work.

The Prevailing wage rate is the basic hourly rate paid on public works projects to a majority of workers engaged in a particular craft, classification or type of work within locality and in the nearest labor market area. California prevailing wage laws ensure that the ability to get a public works contract is not based on paying lower wage rates than a competitor.

In accordance with Labor Code Sections 1770-1773, prevailing wages must be paid to all workers on a "public works" project when the project is over \$1,000 or when government monies are used as the source of funding.

- A. When submitting quotes or proposals for public projects, the contractor must note that the quotation is based on prevailing wages.
- B. Certified payroll will be required to confirm that prevailing wages are being paid by City contractors.
- C. For current prevailing wage rates and information, please refer to the following website: <http://www.dir.ca.gov/DLSR/PWD/>.

9.9 REGISTRATION OF PROJECTS WITH THE CALIFORNIA DEPARTMENT OF INDUSTRIAL RELATIONS (DIR)

The public works reforms brought about by Senate Bill 854 (Stat. 2014, chapter 28) and Senate Bill 96 (Stat. 2017, chapter 28), made several changes to the laws governing how the Department of Industrial Relations (DIR) monitors compliance with prevailing wage requirements on public works projects.

For up to date DIR vendor and City reporting and registration requirements refer to <https://www.dir.ca.gov/>

Each department is responsible for determining if a project is subject to the DIR registration and reporting requirements. As of December 2018, the following key elements apply:

- Public Works projects include construction, alteration, demolition, installation, or repair. Public works projects also include routine, recurring, and usual maintenance work on anything affixed to City real property
- Paid with public funds
- Over \$1,000-Prevailing Wages apply
- Small project exemptions up to \$25,000 for construction and up to \$15,000 for maintenance. These small projects are exempt from registration by the contractor, subcontractors, and the City. Prevailing wages are still required for any public works project over \$1,000. Small project exemption is applied based on the amount of the entire project, not a contractor's subcontracted amount of the project
- Contractors are still required to maintain certified payroll records on a continuous basis, and provide those records to the Labor Commissioner's Office upon request
- Contractors and subcontractors are required to be registered before submitting bids or proposals and remain registered through project completion.
- Contract registration within 30 days of contract award, or prior to the first work day for projects lasting less than 30 days
- Penalties for City noncompliance include fines and/or loss of state funding for one year

9.10 DEPARTMENT OF INDUSTRIAL RELATIONS (DIR) PWC-100 SYSTEM

Per California Labor Code 1773.3, awarding agencies are required to submit notice of contract award through DIR's PWC-100 system on projects that fall outside of the Small Project Exemption, within 30 days of the award, but in no event later than the first day in which a contractor has workers employed upon the public work. The small project exemption applies for all public works projects that do not exceed \$25,000 for new construction, alteration, installation, demolition or repair and \$15,000 for maintenance.

All contracts that do not fall under the Small Project Exemption must be registered with the Department of Industrial Relations. The PWC 100 form online application can be found at <https://www.dir.ca.gov/pwc100ext/>. Public Works Projects Registration (PWC 100) must be filed within 30 days of the award, or before beginning any work, whichever is first. The PWC 100 form must be completed by the City's Project Manager.

The City is still responsible for administering its project and ensuring that public funds are used appropriately. As partners with DIR's Public Works Enforcement team, the City must also ensure that all public works contractors are in compliance with all labor laws.

A. Changes to the Labor law are listed below:

1. Duty to notify the DIR when awarding a contract for a public works project, using the online PWC-100 form.
2. Elimination of the obligation to pay the DIR for compliance monitoring on state bond-funded projects and other projects that required use of the DIR's Compliance Monitoring Unit (CMU).
3. All contractors and subcontractors who bid or work on a public works project must register with, and pay a fee to the DIR.
4. The City may not accept a bid or enter into a contract for public work with an unregistered contractor, except for work that qualifies under the small project exemption.

B. Notice Requirements:

Effective January 1, 2015: The call for bids and contract documents must include the following information:

1. No contractor or subcontractor may be listed on a bid proposal for a public works project unless registered with the DIR pursuant to Labor Code section 1725.5 [with limited exceptions from this requirement for bid purposes only under Labor Code section 1771.1(a), and the small project exemption under Labor Code 1725.5(f)].
2. No contractor or subcontractor may be awarded a contract for public work on a public works project unless registered with the DIR pursuant to Labor Code section 1725.5, unless the work comes under the small project exemption under Labor Code 1725.5(f).
3. The contract must contain the statement that, "This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations."

C. Furnishing of Electronic Certified Payroll Records to Labor Commissioner:

All contractors and subcontractors must furnish electronic certified payroll records directly to the Labor Commissioner (aka Division of Labor Standards Enforcement).