Tips for Reviewing Public Works Contracts

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Tips for Reviewing Public Works Contracts

City Attorneys Department
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Why are public works contracts different?

- Highly regulated by statute
- Composed of multiple documents with multiple authors
- Extensive use of jargon
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What is a public works contract?

- Traditional civil engineering projects (horizontal construction)
  - Streets and roads
  - Water and power
- Structures (vertical construction)
- Private development projects utilizing public funds
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Statutory Mandates

- Obfuscate logic to the location of the provisions
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Sources of Authorship

- Historic “boilerplate”
- City staff (legal and non-legal)
- Outside engineers, architects and attorneys
- Standard specifications publications
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Jargon

- Just like lawyers and doctors, the construction industry has its own unique concepts and uses specialized language to describe them.
- Examples: float, interference, acceleration, delay, divisions.
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Consistency

- Consistency is key to good contract documents
- Requires coordination among numerous documents, many of which will only be available at the last minute
- Use of single references, or use of identical text, will avoid many problems
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- **Pitfalls**
  - Beginning after everything has been drafted
  - Standard specification documents
    - The Greenbook
    - Caltrans Standard Specifications
  - Division One documents supplied by engineer or architect
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Pitfalls (continued)

- Outdated boilerplate documents
- Lack of central control
- Environmental requirements overlooked
- “Can you review this and approve it by tomorrow?”
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Points to Watch

- The bid sheet — is it adequate?
  - Clear and legible
  - Alternative bids or additive or deductive items
  - Drafting for failure
  - Separate bid items for specific project elements
Points to Watch (continued)

- Are the city’s standard forms or language incorporated in the document?
- Indemnity and insurance clauses and forms
  - Watch for inconsistencies
  - Are the forms up-to-date?
- Overreaching as a path to claims
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What law governs this contract?

- Potential sources of law
  - California statutes
  - Federal statutes
  - City Charter
  - Municipal Code
  - Agency regulations and practices
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What law governs this contract? (continued)

- California law always applies
- Federal law may apply but usually overlays state law
- Do not rely on solely on agency instructions
- Are regulated industries involved in the project?
- Do not forget local ordinances or the application of the Uniform Public Cost Accounting Act
Tips for Reviewing Public Works Contracts

The Paper

- Geared to general practitioners, not construction law attorneys
- Focuses on California statues and where to find them
- Provides a foundation for a personal checklist for contract review
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The Paper (continued)

- Divides California codes into mandatory and regulatory sections
  - Mandatory sections require that something be included in the contract documents
  - Regulatory or enabling provisions permit something, require something, or prohibit something, but not necessarily in the contract documents
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- The Paper *(continued)*
  - Provides an immediate overview of the code sections that govern contract documents
  - Can be reorganized to suit personal requirements
  - Must be updated annually as the Legislature acts in its infinite wisdom
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I. Introduction

What makes reviewing a public works contract different than reviewing the myriad of other types of contracts that cross a City Attorney’s desk? Are they really any different? In certain respects, no, they have the basic elements of any other type of contract. One thing that makes them unique, and potentially difficult to address, is the myriad of statutory provisions that govern their creation and interpretation.

While all government contracts have some foundation in statutory law, public works contracts seem unique in the sheer volume — and obscurity — of the statutes that constrain them. In looking at the various code sections addressed in Part IV below, you will find the handiwork of numerous political interest groups that have worked over the years to provide relatively tight control over the drafting and interpretation of public works contracts.

The purpose of this paper is to give you some tips regarding the review of public works contracts, and to provide you with some statutory references that can be used as the basis for preparing a checklist to use in that endeavor. These references will provide you with quick insights into the most commonly applicable and occasionally overlooked public works contracting statutes. The scope of this paper relates primarily to California contracting laws as they apply to traditional public works (civil) projects. Building (vertical) construction, federal contracts, unique local ordinances, city charter provisions, and private development projects that are treated as public works projects due to their use of public funds, are beyond the scope of this paper.
II. Preliminary Steps

A. When to Begin Your Review?

The proper time to begin your review is before the public works contract bidding package or project manual is completed and the invitation for bids (or notice inviting bids) is published. Many of the statutory provisions discussed below apply not only to just the contract that itself, they apply also to the invitation for bids and the information for bidders that is contained in the project manual.

Further, after the project has been advertised and a bid has been accepted, it is really too late to make any changes in the contract form that your Public Works or other city department included in its standard package. While some contractors might consent to some modest changes in the contract, they are entitled to rely on the form that was included in the bid package. The time to include the contract provisions you really want and need is before the bids are ever advertised, not after the contract has been awarded.

B. What Law Will Govern Your Contract?

The California statutes outlined in Part IV below govern most, but not all, public works contracts. In order to be sure that you have identified all of the likely legal requirements you should consider the following questions:

1. What agency or program is the contract for? While the contracts in question may be reviewed by the City Attorney’s office, they may be contracts for a redevelopment agency, a joint powers authority, or one of a variety of special districts. Each of these legally distinct entities may have unique statutory or internal regulations that affect its public works contracts. Some of these entities are not required to publicly bid construction contracts. Part V below provides an overview of most of the most common entities that might be encountered.

2. Does the agency in question have any unique public works contracting requirements in its municipal code? One common provision is the adoption of the Uniform Public Construction Cost Accounting Act (Public Contract Code § 22000 et seq.) Cities operating under that act
are subject to some different bidding limits and procedures than those set forth in the general statutes.

3. What are the sources of funding for this contract? While the use of general fund money is straightforward, the use of local bond proceeds, state bond proceeds, or federal grants can affect the required contract provisions or other facets of the contracting process, such as the applicable prevailing wages, the use of alternative contract forms, or the need for the use of a labor compliance program.

4. Are other unique entities involved in the project? If a railroad is going to be involved in the construction project, there will be special insurance and operational agreements that have to be provided to the railroad’s satisfaction. If a public utility is involved in the project, certain regulations of the Public Utilities Commission may be implicated.

5. Are the environmental effects of the project addressed in the contract documents? The CEQA (or NEPA) review for the project may have identified certain mitigation measures that are required in the construction of the project. These must be addressed in the contract documents. If certain permits are required, such as those from an AQMD, a RWQCB, the Department of Fish and Game, or a federal agency such as the Corps of Engineers, those too must be addressed. These environmental permitting issues are also beyond the scope of this paper and are often unique for each project in any event.

Once you have an understanding of these issues, you are ready to begin your journey.

C. Finding the Law

Many people believe that the law of public works contracting is set forth in the Public Contract Code. That is a misconception. In reality, public works contracting law affecting cities is found not only in the Public Contract Code but also in the Business & Professions Code, Civil Code, Code of Civil Procedure, Government Code, Health & Safety Code, and the Labor Code. Once one moves from the realm of cities, numerous other codes such as the Education Code, Water Code, etc., come into play.
If Federal funding is involved, numerous federal codes, including the Federal Acquisition Regulations, may be applicable. In addition, as noted above, various environmental statutes or permitting processes may also govern elements of the project. If regulated industries, such as railroads or public utilities are involved, there may be mandatory forms or contract language that must be utilized as well.

The remainder of this paper examines some of the most common issues and statutory requirements applicable to public works contracts affecting municipal and related-entity contracts.

III. Some Common Issues

A public works contract commonly consists of the following components: (1) Invitation for Bids, (2) Instruction to Bidders, (3) Contract Form, (4) General Conditions, (5) Special Conditions, and (6) Mandatory Forms (insurance, bonds, etc.). These are typically followed by various “Divisions” that set forth the specifications for each of the subject areas of the work to be performed. Division numbering usually follows some standard promulgated by a recognized standards body. In many contracts the engineer or architect may supply Division One specifications that frequently contain contractual provisions in addition to general engineering specifications. These various components, together with the drawings and specifications constitute the contract documents. They are typically all incorporated in the contract by reference.

When reviewing any contract it is important to make sure that all of the contract elements are consistent. In a construction contract, this includes making sure that the provisions found in the each contract component are consistent. This means making sure that consistent (identical) wording is used when discussing identical issues in the various components of the contract documents. While it is always best to discuss an issue only once, this is not always practical. For example, the notice inviting bids must contain certain contractual language or references, but those legal references are something that probably should also be repeated in the General or Special Conditions where they can be indexed and readily located. To avoid problems, use the same language in both places or make it clear that the more detailed language in the General or Special Conditions is controlling.
Almost all public works contracts in California, other than those involving vertical construction, incorporate by reference one of two standard specifications publications. In Southern California the “Green Book” (“Standard Specifications for Public Works Construction” published by Bni Building News) is most commonly used. In Northern California the Caltrans “Standard Specifications for Construction of Local Streets and Roads” seems to be more commonly used.

It is important to note that the Greenbook (in Part 1) and the Caltrans specifications (in the General Provisions) contain general contract provisions, not engineering specifications. It is important to be sure that none of the provisions in your contract conflict with the provisions of these publications if they are incorporated into your contract documents. If there is intentional conflict, make sure that the provisions of the contract expressly override the conflicting provisions in the standard specification books. Among the areas where conflicts can create serious problems are in the amount of liquidated damages, claims provisions, indemnity, and payment provisions. In certain cases Part 1 of the Greenbook or the General Conditions of the Caltrans specifications are best explicitly excluded as being applicable to a specific contract.

Another potential consistency trap is found in the Division One specifications. If an outside engineer or architect is preparing those specifications, they will frequently contain some or all of the engineer’s or architect’s standard contract language. This presents the same problem as the Greenbook or Caltrans specifications. It may be a more insidious problem, however, because those documents are often made available to the attorney only at the last minute. As a result you may be see them in time to make necessary changes, or staff may not show them to you at all. Documents prepared by a third party are not always in the best interests of a public agency since each profession tends to draft form documents that favor its members, not the owner. Always remind city staff of the old adage: “There’s never time to do it right, but there’s always time to do it over.” Except that in this case doing it over means delaying the receipt of bids or rejecting all bids and reissuing the contract documents. If there is not time for that, then it gets done at the end of the contract by dealing with a contractor’s claim and the subsequent negotiations or litigation.
Contracting, public or otherwise, is the source of considerable industry jargon. That jargon is commonly used in contract documents because it has a recognized meaning in the industry. If you do not know what a particular phrase means, ask someone. It is very common to find that multiple phrases are being used in a document, each one meaning almost the same thing or addressing the same issue or construction principle. If you do not understand a phase, you should find out what it means. You will probably be surprised to learn that the subject of that phrase has already been addressed somewhere else in the contract.

In addition to consistency, be sure that the contract documents contain everything to which you want the contractor to be bound. If your city has a standard form of indemnity agreement, be sure that it is included. The same is true for your standard bond forms. If you do not include precisely what you want, you can be sure that you will get something generic back from the contractor instead.

Check to see that the bid sheet is adequate. Most of the time this is not a problem where a single lump sum bid is sought. Where alternative bids are sought, or additive or subtractive bid elements are to be included, it is important to make sure that the bid sheet complies with Public Contract Code § 20103.8, which is discussed in Part IV. While other staff may draft such alternate bidding provisions, it is imperative that legal counsel carefully review them.

Make sure that the bid sheet is legible and will make sense to a bidder. Requiring that bid prices be set forth in both words and numerals almost always guarantees a problem with one or more of the bids that will be received. For some cosmic reason, the error will always manifest itself in the bid that your affected city department wants to accept. If that department is adamant about continuing to use both words and numerals, make sure that the instructions to bidders contains language that specifies when one or the other will prevail. The contract should also contain language that specifies what happens when unit prices and aggregate prices are inconsistent.

Sometimes it is also desirable to segment the bid sheet into some or all of the various divisions of the work. In more complex projects this itemization can be helpful in dealing with claims, since it establishes values for portions of the work. Note also that Labor Code § 6707
requires a separate bid item for certain types of excavation work. The purpose of that requirement is to insure that the bidder does not forget to include the cost of shoring and bracing when calculating its bid price.

It is noted above that the contract documents commonly incorporate many components by reference. For that reason, the document that is actually signed and called the “contract” may be very short, perhaps only three pages. This is a matter of the drafter’s preference, and there are pluses and minuses to short and long-form contracts. If all documents are properly incorporated by reference, and if all of the required contractual provisions are to be found in those incorporated documents, then a short-form contract is acceptable. If a long form contract is preferred, make sure that its provisions are consistent with those set forth in the other contract elements.

There is no magic to reviewing public works contracts. It is difficult because there are numerous statutory provisions that affect them, they tend to be lengthy and reuse boilerplate language that becomes outdated and inconsistent, and because they incorporate terms and concepts that are unfamiliar to those without experience in the construction world. If you remember the concepts addressed above and become familiar with the common statutes referenced and described below, it is a task that can be managed.
IV. California Statutory Law

A. Preface

There are numerous ways that these codes could be organized, but this paper simply addresses them by California code, beginning with the greatest source of applicable law, the Public Contract Code.

For each code I have endeavored to divide the various code sections into two parts: those that contain mandates and those that are regulatory. Mandatory provisions are those that require some language or code provision to be incorporated, either verbatim or by reference, into the contract, into the notice inviting bids, or both. Regulatory or enabling provisions specify language or code provisions that may be utilized in the contract, must be utilized in contract administration but need not be included in the contract documents, or that must not be utilized when drafting the contract provisions.

Some provisions obviously overlap, and they will be found in the mandatory discussion of each code. In addition, some code sections only apply to state contracts, not municipal contracts. They are being noted in this paper because staff members often mistakenly believe that they are applicable to municipal contracts. By noting them herein you will be able to identify these inapplicable provisions and explain that to the staff members.

You may, if you wish, use the mandatory code sections noted below as the beginning of a public works contract checklist. I also recommend using the regulatory code section in a checklist because attention to them will keep you from permitting prohibited language in the contract documents.

As noted above, the applicability of the code sections to charter cities is beyond the scope of this paper. While at one time public contracting was considered a strictly municipal affair, not subject to state statutory control, that doctrine has eroded over the years. Anyone interest in further exploring the current status of the municipal affair doctrine as it applies to public works contracts might start with the following cases: City of Long
B. Public Contract Code

1. Mandatory Provisions

   a. § 3300

      Requires a public agency to specify the type of contractor’s license required in the plans and the invitation for bids. The determination of the type of license required is the responsibility of the public agency.

   b. § 4104

      Mandates that the bid specifications require the bidder to list subcontractors who will perform work in excess of 1/2% of the total bid or, in the case of streets or highways, 1/2% or $10,000, whichever is greater.

   c. § 4104.5

      This section requires (1) that the notice inviting bids to specify the place and time bids are to be received; (2) that bids received after the time specified in the notice to be returned unopened; and (3) an extension of bid opening for at least 72 hours if there are any material changes, additions, or deletions to the invitation for bids within 72 hours of the scheduled bid opening time.

   d. § 6109

      Requires a contract provision prohibiting a contractor from performing work with a subcontractor who is debarred pursuant to Labor Code §§ 1777.1 or 1777.7.

   e. § 7103.5

      Requires that the contract specifications provide for the assignment of unfair business practices claims (Clayton Act and Cartwright Act) from the contractor to the public agency. (Previously identically numbered § 7103 with current § 7103.)
f. § 7104
Requires contract provisions requiring the contractor to give notice of hazardous materials and certain changed conditions in jobs involving trenching more than four feet deep. (Previously identically numbered § 7104 with current § 7105.)

g. § 7106
Requires that a public works contract contain a Noncollusion Affidavit in the statutory form set forth in this section.

h. § 9201
Authorizes a public agency to compromise or settle any claim relating to a public works contract, but requires a contract provisions for timely notice to the contractor of third-party claims.

i. § 9203
Requires mandatory retainage of at least 5% on any public works contract exceeding $5,000, but permits reduction after one-half of the actual work has been completed.

j. § 20103.5
Requires, for contracts involving federal funds, a reference to the requirement that bidder hold a contractor’s license at the time of contract award and that failure to be so licensed may result in legal penalties.

k. § 20103.6
Requires disclosure of indemnity requirements in architect’s contracts in excess of $10,000.

l. § 20104
Requires a contract reference to Article 1.5 mandatory provisions for the resolution of construction claims under $375,000 except where the agency has elected statutory arbitration procedures under § 10240.
m. § 20104.50

Requires a contract reference to Article 1.7 provisions requiring the public agency to make timely payment to contractor of all progress payments properly due under the contract and to pay interest on any late payments.

n. § 20170

Prescribes the forms of city bidder’s security that must be required by a city.

o. § 20171

Mandates that bid security must be 10% of the bid price (cash, cashier’s or certified check, or admitted surety bid bond)

p. § 22300

Mandates that provisions permitting the contractor to substitute securities for retainage funds are included in the invitation for bids and contract documents and sets forth an escrow form for such substitutions.

q. § 20688.25

Prescribes the forms of city bidder’s security that must be required by a redevelopment agency.


a. § 1100.7

Provides that the Public Contract Code applies to charter cities in the absence of “an express exemption or a city charter provision or ordinance that conflicts with the relevant provision” of the code.

b. § 1103

Defines the term “responsible bidder.”
c. § 1104

Prohibits any contract provision requiring the contractor to warrant the completeness and accuracy of the plans and specifications.

d. § 2002

Permits a local agency to set small business preference and participation goals of up to 5%.

e. § 3400

Prohibits specifications by brand or trade name except where “or equal” substitutions are permitted or where necessary to match existing items in use on a specific public improvement, in order to field test a specific product, if the item is available from only one source, or in the event of an emergency. At least 35 days following contract award must be allowed for substantiation of a request to substitute unless the contract specifies some different time period.

f. §§ 6100–6108

These code sections, although not embodied within the State Contracting Act (Public Contract Code § 10100 et seq.), are nonetheless only applicable to state agencies. Section 6100 requires a state agency to verify that a contractor is properly licensed. (See Business & Professions Code § 7028.15(e) for comparable provisions applicable to local agencies). Section 6101 debars a contractor who has been convicted of violating any law relating to the employment of undocumented aliens. Section 6106 governs the methods by which architects, engineers, land surveyors, environmental, and construction management firms shall be chosen. (See Government Code § 4526 for comparable provisions applicable to local agencies). Section 6106.5 permits contractors to substitute securities in lieu of cash retainage by the state. (See Public Contract Code § 22300 for comparable provisions applicable to local agencies). Section 6107 grants a preference to companies having their principal place of business in California when bidding against an out-of-state bidder whose home state grants it a preference. Section 6108 prohibits procurement contracts with “sweat shop” contractors.
g. § 6109

Provides that if a contractor or subcontractor is ineligible to bid or work on a public works project pursuant to Labor Code § 1777.1 or § 1777.7, no public agency may permit them to bid or perform such work. Contracts between contractors and a debarred subcontractor are void as a matter of law, and any funds paid thereon must be returned to the public agency.

h. § 6610

Provides that mandatory prebid site visits or job walkthroughs cannot occur within five days of initial publication of the notice inviting bids, and details of the time and place of the site visit must be given in the invitation for bids.

i. § 7100

Prohibits provisions providing that acceptance of a payment from the public agency is a waiver by the contractor of all claims. Prohibits provisions that require the submission of a release of all claims as a precondition to any payment.

j. § 7101

Permits clause sharing savings from contractor submitted cost reduction changes but requires that sharing must be 50:50. (See also Government Code § 53069.85 re bonuses for early project completion.)

k. § 7102

Prohibition against limiting damages for delay to time extension only; does not bar liquidated damages. (See also Government Code § 53069.85.)

l. § 7103

Payment bond requirements for state projects. obligations (Applies to state agencies only.) (Formerly identically numbered § 7103 with current § 7103.5)
m. § 7105

Limits contractor’s liability for acts of God, and it defines acts of God to include only earthquakes in excess of magnitude 3.5 on the Richter scale and tidal waves. (Formerly identically numbered § 7104 with current § 7104)

n. § 7107

Requires the payment of retention proceeds within 60 days after completion of the work and the payment of 2%/month interest for late payments. This provision cannot be waived by the contractor.

o. § 7109

Permits a local agency to include anti-graffiti provisions or program in a public works contract.

p. § 7200

Contractor cannot withhold retention from subcontractor in excess of the percentage being withheld by the public agency

q. § 7110

Requires compliance with child and family support obligations. (Applies to state agencies only.)

r. § 9203

Progress payments may not exceed 95% of the value of work completed plus material delivered; a minimum 5% retention is always required

s. § 10262

Requires contractor to pay subcontractors within 10 days of receipt of payment from owner. Subjects the contractor to disciplinary action (Applies to state agencies only.)
t. § 10262.5
Requires contractor to pay subcontractors within 10 days of receipt of payment from owner. Subjects the contractor to the payment of interest. (Applies to state agencies only.)

u. § 20101
Provides for the prequalification of contractors.

v. § 20102
Requires written justification in the public agency’s file for any changes to the plans and specifications if day labor is used following formal bidding.

w. § 20103.5
Exempts federally funded contracts from the requirement that a contractor be licensed at the time of its bid. Requires instead that the contractor be licensed at the time of contract award.

x. § 20103.8
Prescribes the procedures for soliciting alternate bids and for awarding contracts on the basis of bid alternatives.

y. § 20104.6
Provides that no local agency may fail to pay any money related to the undisputed portion of a contract, except as provided in the contract, and that if suit is filed, the local agency must pay interest at the legal rate on any judgment or arbitration award rendered against it. Interest only begins to accrue on the date suit is filed, however.

z. § 20133
Grants design-build authority for Alameda, Contra Costa, Sacramento, Santa Clara, Solano, Sonoma and Tulare counties
aa. § 20175.1

Grants design-build authority for the cities of Brentwood, Hesperia, Vacaville and Woodland

bb. § 20209.5

Grants design-build authority to transit operators

c. § 22000 et seq.

The Uniform Cost Accounting Act. For those agencies electing to be governed by it, the act provides alternative public contracting procedures. Projects of $25,000 or less may be performed by force account, by negotiated contract, or by purchase order. Projects of $100,000 or less may be let pursuant to informal procedures set forth in the act. Projects of greater than $100,000 must be let by formal bidding procedures. In addition, the act contains its own definitions of “public project” and “maintenance work.”

C. Labor Code

1. Mandatory Provisions

a. § 1773.2

Requires that the invitation for bids, the bid specifications and the contract documents specify the prevailing wage rates applicable to the contract (Prevailing wages apply to jobs over $1,000 per § 1771, unless the agency is using a labor compliance program under § 1771.5, in which case the limit is $15,000.)

b. § 1773.8

Requires that the contract specifications mandate the payment of travel and subsistence payments as required by statute.

c. § 1775

Requires a contract provision stating that the statutory provisions for penalties for failure to pay prevailing wages will be enforced.
d. § 1776
Requires the contract to mandate compliance with the statutory requirements relating to certified copies of payroll records.

e. § 1777.5
Requires the contract to mandate compliance with the statutory requirements relating to the employment of apprentices.

f. § 1810
Requires a contract provision stating that eight hours labor constitutes a legal day's work.

g. § 1813
Requires a contract provision stating that the statutory provisions for penalties for failure to comply with wage and hours laws will be enforced.

h. § 1860
Requires the contract to state that the contractor will be required to secure the payment of workers' compensation to its employees.

i. § 1861
Requires the contractor to sign and file a statement acknowledging its obligation to secure the payment of workers compensation to its employees before commencing work.

j. § 6705
Requires a clause mandating that the contractor submit a detailed plan of the shoring and bracing for trenches five feet deep or more for contracts in excess of $25,000.
k. § 6707

Requires a separate bid item for the construction of a pipeline, sewer, sewage disposal system, boring and jacking pits, or similar trenches or open excavations, which are five feet or deeper.


a. § 1720

Defines “public works.”

b. § 1735

Prohibits employment discrimination in public works contracts

c. § 1740

Permits a blanket modification to the contract bid specifications to require compliance with federal prevailing wage laws.

d. § 1771

Requires the payment of prevailing wages (“the general prevailing rate of per diem wages”) on all public works projects greater than $1,000. (But see also § 1771.5 where agencies having a labor compliance program under have a threshold limit of $15,000.)

e. §1771.5

Provides that an agency may establish a voluntary labor compliance program. This program must provide that the agency will undertake certain compliance actions that would otherwise be undertaken by the Department of Industrial Relations. The Director of Industrial Relations must approve the program.

f. § 1777.6

Prohibits employment discrimination against apprentices in public works contracts.
g. § 6501.5

Requires any contractor who engages in asbestos-related work that involves 100 square feet or more of surface area of asbestos containing material to register with the Division of Occupational Health & Safety. The contractor must also be certified pursuant to § 7058.5 of the Business & Professions Code.

D. Government Code

1. Mandatory Provisions

a. § 4215

Requires contract provisions that compensate the contractor for main and trunkline utilities relocation work that was not shown on plans and specifications. The contract must also specify that the contractor will not be assessed liquidated damages for delay caused by agency’s failure to provide for removal or relocation of such facilities.

b. § 53068

Requires the notice inviting bids to specify the place and time where bids are to be received. Requires bids received after the time specified in the notice to be returned unopened.

c. § 53069.85

Permits liquidated damages (which it describes as a “forfeiture”) unless the amount was manifestly unreasonable at the time the contract was made. It also permits bonus for early completion. It also applies to the procurement of goods and services if specially manufactured. The liquidated damages and bonus provisions must be clearly set forth in the bid specifications. (See also Public Contract Code § 7101 regarding sharing cost savings with the contractor.)

a. § 4004

Requires the public entity’s engineer to prepare and file either complete and accurate plans and specifications or a work authorization describing the work to be performed, together with an estimate of the cost thereof, prior to the commencement of the work. Also requires the public entity’s engineer to keep an accurate account of the cost of each public work. Detailed information concerning the project, including the total cost of the work broken into its component parts, is required to be filed within 60 days of the completion of the project under § 4005. Failure to comply with this section is a misdemeanor under Govt. Code § 4007. This section effectively precludes the use of design-build by public entities unless it is expressly authorized under some other provision of law.

b. § 4420

Prohibits requiring a bidder to apply to, furnish information to, or obtain a bond or insurance policy from a specific company, agent or broker (except contracts for builder’s risk or owner’s protective liability coverage).

c. § 4525

Prescribe procedures for the negotiation and award of architectural, engineering, environmental services, land surveying, and construction project management contracts. (See also Public Contract Code § 6106.)

d. § 12940

Prohibits employment discrimination generally

e. § 54981, 54983

Authorizes one local agency to contract with another for the performance of municipal services or functions. The contract amount cannot exceed the force account limit of the agency contracting to receive the services.
E. Business & Professions Code

1. Mandatory Provisions
   a. § 7028.15(e)

Requires a public agency to verify that the contractor was properly licensed at the time it submitted its bid, prior to awarding a contract. Provides for the citation of any public officer or employee of a public entity who knowingly awards a contract or issues a purchase order to an unlicensed contractor.

   a. § 7058.5

A contractor engaged in asbestos-related work which involves 100 square feet or more of surface area of asbestos containing materials must pass an asbestos certification examination. (See also Labor Code § 6501.5 above.)

   b. § 7108.5

Unless otherwise agreed in writing, a prime contractor or subcontractor shall pay to any subcontractor or sub-subcontractor, not later than 10 days after the receipt of each progress payment. Failure to do so is a disciplinary offense, and results in a 2% per month penalty and right to collect attorneys’ fees.

   c. § 7108.6

Unless otherwise agreed in writing, a prime contractor or subcontractor shall pay any dump truck operator not later than the 20th of the month. Failure to do so is a disciplinary offense, and results in a 2% per month penalty and right to collect attorneys’ fees.
F. Civil Code

1. Mandatory Provisions
   a. § 3247

Requires the invitation for bids to mandate the submission of a payment bond on projects in excess of $25,000.

   a. § 2782

Prohibits indemnity provisions in public construction contracts that purport to indemnify the public agency against its own sole negligence, willful misconduct, or active negligence.

   b. § 3247 et seq.

These sections contain the provisions for payment bonds. These include the fact that a payment bond must be in the form of a bond, not in the form of a deposit in lieu of a bond.

G. Code of Civil Procedure

1. Mandatory Provisions

None.

   a. § 995.630

Requires the acceptance of a bond executed by admitted surety insurer if it is otherwise properly executed.

   b. § 995.670

Prohibits any agency from requiring compliance with any requirements other than those of Code of Civil Procedure § 995.660 if it is objecting to the sufficiency of the bond.
H. Streets & Highways Code

1. Mandatory Provisions

None.


a. § 1803

Authorizes cities to contract with counties to repair and maintain streets or to rent street maintenance equipment from a county.
V. Specific Agencies

A. Preface

It is not always easy to locate code provisions that relate to specific governmental entities or programs. The following is a list of entities and programs that might be of interest to City Attorneys.

B. Entities and Programs

1. Public Contract Code
   a. § 20160

General Law Cities

   b. § 20410

Improvement Act of 1911

   c. § 20470

Grade Separation Districts

   d. § 20480

Municipal Improvement Act of 1913

   e. § 20500

Street Lighting Act of 1919

   f. § 20510

Street Lighting Act of 1931

   g. § 20520

Municipal Lighting Maintenance District Act of 1927
h. § 20530
Joint Highway Districts

i. § 20550
Boulevard Districts

j. § 20640
Municipal Water Districts

k. § 20670
Public Leaseback Contracts (applicable to all public entities engaged in leaseback transactions)

l. § 20680
Community Services Districts

m. §20688.1
Redevelopment Agencies

n. § 20820
Community Facilities Law of 1911

o. § 20840
Improvement Act of 1911

p. § 20850
Improvement Act of 1911

q. § 20880
Improvement Act of 1911
r. § 20890

Tree Planting Act of 1931

2. Government Code
   a. § 53382.3

Community Rehabilitation Districts
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