

THE COMMUNITY REDEVELOPMENT AGENCY OF THE CITY
OF LOS ANGELES, CALIFORNIA

POLICY ON PAYMENT OF PREVAILING WAGES BY PRIVATE
DEVELOPERS, REDEVELOPERS OR OWNER-PARTICIPANTS

Revised: February 1986
Approved: February 24, 1986

Introduction

Under the Community Redevelopment Law of the State of California, the Community Redevelopment Agency of the City of Los Angeles may enter into contracts or other agreements with developers of property to assist in the acquisition or the improvement of such property to eliminate blight. The Agency is also empowered to enter into agreements with owners of property in redevelopment project areas to develop their property pursuant to the requirements of adopted redevelopment plans. In all such agreements, the Agency may require the private owner or developer to comply with conditions which the Agency deems necessary to carry out the purposes of the Community Redevelopment Law.

Under certain circumstances, the Agency may provide funding which has been obtained from the Federal Government for use by private developers or owners in the development of their property. In such cases, the federal grant or loan or mortgage assistance program may require that construction work performed in such projects comply with the requirements of the Davis-Bacon Act (40 U.S.C. 276 et. seq.), which requires the payment of wages to laborers and mechanics at a rate not less than the minimum wage specified by the Secretary of Labor in periodic wage rate determinations.

In addition, whenever the, Agency contracts directly for public works improvements, the contractor is required by pertinent State law provisions to pay not less than the prevailing rate of wages to workers employed on the public work.

The public purposes which underlie both the Davis-Bacon Act and the State prevailing wage requirements apply no less to work performed on a project which is the subject of an agreement between the Agency and a private developer or owner. Those purposes include protecting the employees of contractors on public projects from substandard wages, promoting the hiring of a local labor force, and ensuring, to the extent possible, that the quality of the work to be performed will not be compromised by the payment of less than the prevailing rate of wages. That is, developers who seek Agency assistance, or property owners who wish to develop their property pursuant to an owner participation agreement, should not be permitted to pay, or to allow their contractors or subcontractors to pay less than the prevailing rate of wages for work performed pursuant to an agreement with the Agency.

The Legislature has declared that the redevelopment of blighted areas and the provisions for appropriate construction policies in them constitute public uses and purposes and are governmental functions of state concern in the interest of health, safety and welfare of the people of the State and of the communities in which the blighted areas exist. The Legislature has further declared that genuine employment opportunities for all the people of the State are vital to the States peace and prosperity, and that a fundamental purpose of redevelopment is to expand employment opportunities for jobless, underemployed and low-income persons. Therefore, the

Agency has determined that the application of prevailing wage requirements to private developers or owners of property who enter into agreements with the Agency for the development of such property is a necessary condition in carrying out the purposes of the Community Redevelopment Law.

I. Statement of Policy

It is the policy of the Agency that any developer or Owner of property who enters into a Agreement with the Agency for the development of such property shall pay or cause to be paid to all workers employed in connection with the development of such property, not less than the prevailing rates of wages, as provided in the statutes applicable to the Agency public works contracts, including without limitation Section 33423-33426 of the California Health and Safety Code and Sections 1770-1780 of California Labor Code. However, notwithstanding the foregoing, this policy shall not apply to the payment of wages to such workers who have not approved by and are appropriately registered in a Starting Apprenticeship Program administered by the Building Trades. Those workers shall be paid at the rate of wages prescribed by the appropriate collective bargaining agreement in effect for such trade; provided a list of current enrollees in the Program has been submitted to the Agency for review. In addition, the foregoing Agency Policy shall not apply to Agreements in which the total aggregate cost of construction does not exceed \$250,000 in the case of residential development, and \$100,000 in the case of non-residential developments. However, notwithstanding the foregoing, a special residential wage rate established by the State of California, Department of Industrial Relations, Division of Labor Statistics and Research for public projects, may be paid to those trade-crafts or classifications performing work on Agency sponsored residential projects in which a developer or contractor has requested and received approval from the Agency to pay.

In the case of an Agreement with the Agency which involves the use of federal funds, such use shall be subject to the prevailing wage requirements, if any, mandated by the federal program legislation by which such funds are authorized. In the case of construction work financed in whole or in part with assistance provided under the Community Development Block Grant ("CDBG") program of the United States Department of Housing and Urban Development, the Davis Bacon Act applies to any Agreement with the Agency which involves CDBG funds in the amount of \$2,000 or more. ' However, this CDBG requirement applies to the rehabilitation of residential property only if such property is designed for residential use of eight or more families.

2. Construction of Terms and Phrases

For purposes of implementing this policy, the following shall apply:

- (a) The phrase "developer or owner" means any person, corporation, partnership, joint venture, association or entity regardless of form, whether public or private, for-profit or not-for-profit, which enters into an Agreement with the Agency, as hereinafter defined.
- (b) The phrase "an Agreement with the Agency" means any disposition and development agreement, owner participation agreement, development agreement, loan agreement, rehabilitation agreement, agreement for the sale of land or any other agreement to which the Agency is a party, regardless of form or title, whereby a developer or owner of property in the City of Los Angeles agrees to develop or cause the development of such property. An Agreement in which the Agency agrees to subsidize or guarantee a rehabilitation loan to be made to a developer or owner by a lending institution shall be deemed "an Agreement with the Agency" for purposes of this policy. However, to the extent that an Agreement with the Agency provides for the use of federal financial assistance, this policy is not intended to supersede the prevailing wage requirements, if any, mandated by the federal grant, loan or mortgage insurance program legislation by which such assistance is authorized, but shall be deemed to be supplementary to such requirements.
- (c) The phrase "the development of property" means any demolition, construction, rehabilitation, reconstruction or other work of improvement to be performed by or on behalf of an owner or developer in accordance with an Agreement with the Agency.
- (d) The phrase "all workers employed in connection with the development of such property" shall mean and refer to each craft, classification or type of worker, as determined by the rules and regulations of the California Department of Industrial Relations, actually employed by the developer or owner, or by a contractor or subcontractor, to perform labor or services in connection with the development of the property. In the case of a family owned business which employs family members, who have an ownership interest in such business, such family members shall not be deemed to be "workers employed in connection with the development of such property" for purposes of this policy.
- (e) The phrase "prevailing rates of wages" means the general prevailing rate of per diem wages in the locality in which the work is performed, for each craft or type of worker needed to perform the work, and the general prevailing rate for regular, holiday and overtime work in the locality, for each craft or type of worker needed to perform the work, as provided to the Agency by the California Department of Industrial Relations pursuant to Section 1773 of the Labor Code.

- (f) The phrase "total aggregate cost of construction" means the total sum of costs incurred by the developer or owner in connection with the development of property which is the subject of an Agreement with the Agency, excluding the cost of acquiring the property and also excluding the cost of tenant improvements which are not paid for by the developer or owner, and which are constructed under contract with a contractor other than the general contractor or a sub-contractor already on the job. The intent of this Policy is to cover only non-excluded initial tenant improvements which are part of the construction or substantial rehabilitation contemplated in the Agreement with the Agency. The "total aggregate cost of construction includes, without limitation, the cost to the developer or owner of contractors" services, architectural and engineering services, materials, direct labor and all other costs which are customarily considered to be costs of construction. In the case of multiple projects which are functionally or substantively related, Agency staff shall determine whether the purposes to be served by this policy require that the costs incurred with respect to such projects must be combined in determining the "total aggregate cost of construction."

3. Implementation of Policy

This policy shall be implemented and enforced by Agency staff as follows:

- (a) Every Agreement with the Agency to which this policy applies shall contain a provision whereby the developer or owner shall agree to pay or cause to be paid to all workers employed in connection with the development of the property. not less than the prevailing rates of wages, as provided in the statutes applicable to Agency public works contracts, including without limitation Sections 33423-33426 of the California Health and Safety Code and Sections 1770-1780 of the California Labor Code. Every Agreement with the Agency to which this policy applies shall also contain a provision incorporating this policy by reference.
- (b) Every owner or developer entering into an Agreement with the Agency to which this policy applies shall include, in all contracts for work relating to the development of the property to which the Agreement applies, a provision whereby the contractor shall agree to pay and shall cause its subcontractors to pay all workers employed in connection with such contact or subcontract not less than the prevailing rates of wages, as provided in the statutes applicable to Agency. public works contracts, including without limitation Sections 33423-33426 of the California Health and Safety Code and Sections 1770-1780 of the California Labor Code.
- (c) Prior to the execution of any Agreement with the Agency to which this policy applies, Agency staff shall provide a copy of this policy to the owner

or developer. It shall be the obligation of the developer or owner to provide copies of this policy to its contractors and subcontractors.

- (d) Prior to the commencement of construction, and as soon as practicable, Agency staff shall hold an orientation meeting with any owner or developer who enters into an Agreement with the Agency to which this policy applies, and with the General Contractor of such owner or developer in order to explain such matters as the specific rates of wages to be paid to workers employed in connection with the development of the property, preconstruction conference requirements, record keeping and reporting requirements necessary for the evaluation of an owner or developer's compliance with this policy.

4. Enforcement

- (a) Every owner or developer entering into an Agreement with the Agency to which this policy applies shall maintain or cause its contractors and subcontractors to maintain an accurate record showing the name, occupation and actual per diem, regular, overtime and holiday wages paid to each worker and fringe benefits (as appropriate) paid to or on behalf of each worker employed in connection with the development of the property, the hours worked by such workers and amounts withheld pursuant to law. It shall be the responsibility of the owner or developer to maintain such records in the event that its contractors or subcontractors do not maintain such records. Such records shall be open for inspection by Agency staff at reasonable hours.
- (b) Agency staff shall periodically monitor compliance with this policy by inspecting payroll records, interviewing workers at the construction site or by other similar means. Any owner or developer entering into an Agreement with the Agency to which this policy applies shall cooperate with Agency staff in carrying out this policy.
- (c) Agency staff shall promptly and thoroughly investigate any claim made by a worker that less than prevailing wages were paid for work performed in connection with the development of property to which this policy applies. Any owner or developer entering into an Agreement with the Agency to which this policy applies shall cooperate with and cause its contractors and subcontractors to cooperate with Agency staff in carrying out such investigation, and shall promptly pay or cause its contractors or subcontractors to pay any amount determined by Agency staff to be the difference between the applicable prevailing wage for the number of hours worked by the claimant and the amount actually paid to the claimant. At the request of Agency staff, an owner or developer shall withhold funds from its contractor, or cause its contractor to withhold funds from a

subcontractor, prior to the completion of such investigation, to ensure that the amount of such restitution, if required, is available.

- (d) In the event that the Agency staff determines that a contractor or subcontractor has violated any provision of this policy, the developer or owner and Agency staff shall agree on appropriate measures, in addition to restitution, to ensure that such contractor or subcontractor complies with this policy. Such measures may include, without limitation, a requirement that during the contract period the owner or developer withhold funds from the contractor or cause the contractor to withhold funds from the subcontractor, or that the contractor post a bond or provide a letter of credit or other security in an amount sufficient to ensure that workers employed in connection with such contract or subcontract receive the prevailing rates of wages for the work to be performed. Any owner or developer entering into an Agreement with the Agency to which this policy applies shall include in its contracts and require its contractors to include in subcontracts, appropriate provisions by which the provisions of this paragraph may be carried out.
- (e) In the event of a dispute between the owner or developer, or its contractors or subcontractors, or a claimant, and the Agency staff with respect to an Agency staff determination, the owner or developer, or its contractors or subcontractors, or the claimant, as the case may be, shall have the opportunity to bring the dispute before the Agency Board for review. The Agency Board may take such action as it deems appropriate, including: (i) affirming the Agency staff determination; (ii) referring the matter back to Agency staff for further investigation; (iii) reversing or modifying the Agency staff determination; (iv) directing the Agency staff to appoint an independent hearing examiner for further investigation; or (v) such other action as the Board may deem appropriate under the circumstances.
- (f) Penalties. In addition to any restitution required by this Policy and/or applicable law, any developer or owner determined by the Agency to have violated any provision of this Policy, shall forthwith pay the following as a penalty to the Agency:
 - (1) Payment of less than Prevailing Wages:

\$50 per calendar day, or portion thereof, for each worker paid less than prevailing wages.
 - (2) Failure to Provide all requested Records and/or Provide Access to Job Site or Workers:

\$5,000 per day, or portion thereof.

The provisions of this section 4.(f) shall be included verbatim in the clause required by Section 3.(a) for Agreements with the Agency, and in the clause required by Section 3.(b) for owner and developer agreements.

5. Sanctions

Any developer or owner determined by the Agency to have paid less than prevailing wages for work performed in connection with the development of property to which this policy applies, or whose contractors or subcontractors have been found to have paid less than the prevailing rate of wages, shall promptly pay or cause its contractors or subcontractors to pay restitution to any worker to whom wages less than the prevailing rate have been paid. The amount of such restitution shall be the difference between the applicable prevailing wage rate for the number of hours the claimant was found to have worked and the amount actually paid to the worker. In the event that such restitution is not promptly made, Agency staff may refer the matter to the State Department of Industrial Relations or other appropriate governmental agency or licensing board for further action. In the event that the Agency staff determines that there is a pattern of noncompliance with this policy by any owner or developer, or its contractors or subcontractors, the Agency staff may refer to the State Department of Industrial Relations or other appropriate governmental agency or licensing board for further action. Moreover, in the event that the Agency Agreement involves any direct Agency assistance to the developer or owner, including without limitation, financial assistance, or discretionary Agency action such as the grant of a variation from requirements of the redevelopment plan, or other Agency consideration, the failure by the developer to comply with this policy shall be deemed to be a breach of contract, authorizing the Agency to take all appropriate action, including rescission of the Agreement, or to seek judicial relief for damages or injunctive relief.

6. Waivers

The Agency Board reserves the right, in its sole discretion, to waive or modify any provision of this policy with respect to any project, upon a showing that the interests to be served by this policy and the purposes generally of the Community Redevelopment Law will not be adversely affected by such waiver or modification.