

CALIFORNIA ENERGY COMMISSION

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www.energy.ca.gov



Addendum 3
January 24, 2013
PON-12-605
GRANT SOLICITATION APPLICATION PACKAGE
NATURAL GAS FUELING INFRASTRUCTURE

The purpose of this addendum is to update a formula in the application Budget form and replace Prevailing Wage language in "Attachment 14, Special Terms and Conditions."

- Sheet "**ATT B-1b Category Summary**":
The Grand Total amount of the Match Funding, (Column S, Row 15) was updated with a corrected formula. If you've already completed your budget forms you may opt to insert the following formula into Column S, Row 15 to avoid repeating completed work.

If your formula reads:
=SUM(C15:R15)

Please replace it with:
=SUM(S11+S14)

- **Public Work -- Payment of Prevailing Wages Generally Required by Law**
 - Projects that receive an award of public funds from the Energy Commission often involve construction, alteration, demolition, installation, repair or maintenance work over \$1,000.
 - **NOTE: Therefore projects that receive an award of public funds from the Energy Commission are likely to be considered public works under the California Labor Code. See Chapter 1 of Part 7 of Division 2 of the California Labor Code, commencing with Section 1720 and Title 8, California Code of Regulations, Chapter 8, Subchapter 3, commencing with Section 16000.**
 - Accordingly, the Energy Commission assumes that all projects it funds are public works. Projects deemed to be public works require among other things the payment of prevailing wages.
 - **NOTE: Prevailing wage rates can be significantly higher than non-prevailing wage rates.**
 - By accepting this grant, Recipient as a material term of this agreement

shall be fully responsible for complying with all California public works requirements including but not limited to payment of prevailing wage. Therefore, as a material term of this grant, Recipient must either:

- (a) Proceed on the assumption that the project is a public work and ensure that:
 - prevailing wages are paid; and
 - the project budget for labor reflects these prevailing wage requirements; and
 - the project complies with all other requirements of prevailing wage law including but not limited to keeping accurate payroll records, and complying with all working hour requirements and apprenticeship obligations;
- or,
- (b) Timely obtain a legally binding determination from DIR or a court of competent jurisdiction before work begins on the project that the proposed project is not a public work.
- **NOTE: Only the California Department of Industrial Relations (DIR) and courts of competent jurisdiction have jurisdiction to issue legally binding determinations that a particular project is or is not a public work.**
- If the Recipient is unsure whether the project receiving this award is a “public work” as defined in the California Labor Code, it may wish to seek a timely determination from the California Department of Industrial Relations (DIR) or an appropriate court.
- **NOTE: Such processes can be time consuming and therefore it may not be possible to obtain a timely determination before the date for performance of the award commences.**
- If the Recipient does not timely obtain a binding determination from DIR or a court of competent jurisdiction that the project is not a public work, before the grant agreement from the Commission is executed, the Recipient shall assume that the project is a public work and that payment of prevailing wages is required and shall pay prevailing wages unless and until such time as the project is subsequently determined to not be a public work by DIR or a court of competent jurisdiction.
- **NOTE: California Prevailing Wage law provides for substantial**

damages and financial penalties for failure to pay prevailing wages when payment of prevailing wages is required.

- **Subcontractors and Flow-down Requirements.** Recipient shall ensure that its subcontractors, if any, also comply with above requirements with respect to public works/prevailing wage. Recipient shall ensure that all agreements with its contractors/subcontractors to perform work related to this Project contain the above terms regarding payment of prevailing wages on public works projects. Recipient shall be responsible for any failure of Recipient's subcontractors to comply with California prevailing wage and public works laws.
- **Indemnification and breach.** Any failure of Recipient or its subcontractors to comply with the above requirements shall constitute a breach of this agreement that excuses the Commission's performance of this grant agreement at the Commission's option, and shall be at Recipient's sole risk. In such a case, Commission may refuse payment to Recipient of any amount under this award and Commission shall be released, at its option, from any further performance of this award or any portion thereof. By accepting this grant award, as a material term of this agreement, Recipient agrees to indemnify the Energy Commission and hold the Energy Commission harmless for any and all financial consequences arising out of or resulting from the failure of Recipient and/or any of Recipient's subcontractors to pay prevailing wages or to otherwise comply with the requirements of prevailing wage law.
- **Budget.** Recipient's budget on public works projects must indicate which job classifications are subject to prevailing wage. For detailed information about prevailing wage and the process to determine if the proposed project is a public work, Recipient may wish to contact the California Department of Industrial Relations (DIR) or a qualified labor attorney of their choice for guidance.
- **Covered Trades.** For public works projects, Recipient may contact DIR for a list of covered trades and the applicable prevailing wage.
- **Questions.** If Recipient has any questions about this contractual requirement or the wage, record keeping, apprenticeship or other significant requirements of California prevailing wage law, it is recommended that Recipient consult DIR and/or a qualified labor attorney of its choice before accepting the award for this grant.
- **Certification.** Recipient shall certify to the Energy Commission on each Payment Request Form, either that (a) prevailing wages were paid to eligible workers who provided labor for work covered by the payment request and that the Recipient and all contractors and subcontractors

otherwise complied with all California prevailing wage laws, or (b) that the project is not a public work requiring the payment of prevailing wages. In the latter case, Recipient shall provide competent proof of a DIR or court determination that the project is not a public work requiring the payment of prevailing wages.

- Prior to the release of any retained funds under this Agreement, the Recipient shall submit to the Energy Commission the above-described certificate signed by the Recipient and all contractors and subcontractors performing public works activities on the project. Absent such certificate, Recipient shall have no right to any funds under this grant, and Commission shall be relieved of any obligation to pay said funds.

Kevyn Piper
Grants and Loans Officer