

New State Laws Impact City Infrastructure Project Contracting and Administration

This year the California State Legislature enacted two laws, SB7 and SB854, which will impact City resources with regard to infrastructure projects. SB7 requires all cities to pay prevailing wages on public works construction contracts over \$25,000 and maintenance/repair contracts over \$15,000, or be ineligible for State funding for such projects. Longstanding City policy, affirmed by Council motion in 2000, is to pay prevailing wages only for public works construction contracts but not for routine maintenance/repair work.

It is unclear at this time what the fiscal impact of SB7 compliance is (the City bids projects on a unit of measure or lump sum basis and not by hourly wage rates), but costs for maintenance projects can be expected to increase, perhaps substantially. Staff last analyzed the potential effects of paying prevailing wages on maintenance projects in the late 1990s, concluding at that time that costs could increase by 25 percent.

The City must inform the Department of Industrial Relations how it intends to comply with the law (or not), which could include adoption of an ordinance or resolution. Staff is currently evaluating options and will update Council at the earliest opportunity.

In February 2014, several charter cities filed a lawsuit seeking to strike down SB7 and asking the court for an injunction to stop its implementation. The Superior Court ruled in favor of the State, finding that the legislation was within the State's legislative power. It is anticipated that the cities, in conjunction with the League of California Cities, will appeal the ruling, but that will not prevent SB7 from taking effect January 1, 2015.

Another law recently enacted, SB854, requires contractors and subcontractors as of July 1, 2014 to be annually "registered and qualified" by the Department of Industrial Relations in order to bid on contracts for public works. Contractors and subcontractors not so registered are precluded from bidding on public works projects, and local agencies must verify compliance or awarded contracts will be subject to cancellation in certain instances. This law will apply to bids submitted to cities after March 1, 2015.

In advance of the effective date, staff must revise its bid documents and put a system in place to verify both initial and ongoing contractor/subcontractor compliance. These efforts will add time and potentially cost to the contract award and administration processes. This includes verifying initial registration status (often with multiple subcontractors on one project), annual compliance tracking for longer-term projects, verifying status of replacement subcontractors, etc. Processes must be put in place to reject unregistered contractors and/or subcontractors, which in addition to taking additional time could result in higher rates of bid rejections and contract modifications, and increased costs for alternate or replacement contractors/subs.