

**Labor Compliance Bulletin:  
What You Need to Know about the Applicable Prevailing Wage Determination for  
Newly Awarded Lease Leaseback Projects and  
Amendments for Construction Services  
As of September 4, 2021 (“Effective Date”)**

Purpose

This bulletin is to provide background and answers to questions on the applicable prevailing wage determination for Lease Leaseback (LLB) projects for preconstruction services versus construction services (which may have multiple phases for tenant improvements). The New Rule, as described further below, applies to both *newly awarded LLB projects and any contract amendments for construction services for LLB projects as of Effective Date.*

Background

Authorized under Education Code section 17406, effective January 1, 2017, LLB is as an alternative procurement awarded under a best value selection, compared to traditional design bid build awarded on lowest bid.

After general contractors have been selected through a Request for Qualifications (RFQ), the District publishes an advertisement for a given project via a Request for Proposals (RFP) to solicit pricing for preconstruction services from that pool of qualified general contractors. The selected general contractor works collaboratively with the architect on design and scope. With limited exceptions, no construction services normally occur during preconstruction phase. After design is complete and Division of State Architect approves the plans and drawings, the selected general contractor publishes a subsequent advertisement to subcontractors to bid on trade packages for construction services.

Unlike design bid build with only one advertisement for construction services published from the District to general contractors, LLB has multiple advertisements, including an advertisement for preconstruction services published from the District to the pool of qualified general contractors and one or more advertisements for construction services published from the selected general contractor to subcontractors. Multiple advertisements for a given LLB project has led to confusion as to the which published advertisement triggers the applicable bid advertisement date and the applicable prevailing wage determination *during construction*. For this reason, on or about July 18, 2019, the District requested guidance from Department of Industrial Relations (DIR).

On or about August 26, 2019, DIR responded that the applicable prevailing wage determination *during construction* is the one in effect at the time that the RFP advertisement was published from the District to the qualified pool of general contractors and continues to apply for the duration of the project regardless of the number of phases for construction services (collectively as “the Old Rule”). The District requested that DIR revisit this issue again.

On or about April 26, 2021, DIR provided informal guidance to the District that the applicable prevailing wage determination *during construction* of a given LLB project is the one in effect at

the time the bid advertisement for construction services was published from the selected general contractor to subcontractors (collectively as “the New Rule.”)

Based on the above, the District has prepared the following FAQs to explain how the District will implement the New Rule as of Effective Date.

**1. What is the applicable bid advertisement date on a LLB project during *preconstruction*?**

The applicable bid advertisement date during preconstruction is the date that the RFP is first published in a newspaper of general circulation.

**2. What is the applicable wage determination on a LLB project during *preconstruction*?**

The applicable wage determination during preconstruction is the one in effect on the date the RFP is first published in a newspaper of general circulation.

**3. Will the District register the contract for *preconstruction services* associated with a LLB project with DIR?**

Yes. The District will submit a PWC-100 form to DIR to register the contract for preconstruction services. Upon registration, DIR will issue a Project ID number.

**4. Will the District register the contract amendment for additional *preconstruction services* associated with a LLB project with DIR?**

Yes. Each contract amendment for preconstruction services will have its own separate DIR Project ID number.

**5. What is the bid advertisement date and the applicable prevailing wage determination for the first contract amendment which adds a District defined Guaranteed Maximum Price (GMP) phase of construction services associated with a LLB project?**

The applicable bid advertisement date is the first date the general contractor published<sup>1</sup> its advertisement to subcontractors for that District defined GMP phase of construction services covered under the contract amendment. Likewise, the applicable prevailing wage determination is the one in effect at the time that the general contractor first published the bid advertisement for the District defined GMP phase of construction services under the contract amendment. This is the New Rule.

- *Example: RFP's bid advertisement date was published on September 18, 2018. The applicable wage determination for preconstruction services under the contract is 2018-2. Subsequently, the general contractor published an advertisement for construction services to subcontractors on April 30, 2021 for GMP #1 for Phase #1, to be covered under a first contract amendment. The applicable wage determination for GMP #1 is 2021-1. This wage determination would apply for the entire GMP #1, including all change orders.*

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<sup>1</sup> For securing bids from subcontractors, the general contractor shall publish an advertisement at least once a week for two weeks in a newspaper of general circulation within the county. See Education Code section 17406(a)(4)(B)(i) The general contractor may also invite bids from subcontractors through a website, an electronic portal, social media, email, and other means as supplemental to the statutory publication requirement.

**6. What is the bid advertisement date and the applicable prevailing wage determination for each subsequent contract amendment, which adds another District defined Guaranteed Maximum Price (GMP) phase of construction services associated with a LLB project?**

For any subsequent contract amendment **adding another GMP, where each GMP is associated with a District defined phase of construction services**, each GMP phase will be published in an advertisement individually and separately by the general contractor to subcontractors for bid. While the general contractor may decide to publish multiple advertisements (*i.e.*, to solicit better pricing or other business reasons) for a given GMP phase, only the first bid advertisement published per District defined GMP phase will be used to establish the applicable prevailing wage determination for that entire GMP phase. This means that each contract amendment for each District defined GMP phase for construction services may have a different wage determination, depending on when its first advertisement is published from the general contractor.

- *Example: The same example above AND thereafter, the general contractor published another separate advertisement for construction services to subcontractors on November 1, 2021 for GMP #2 for Phase #2, to be covered under another contract amendment. The applicable wage determination for GMP #2 is 2021-2. This wage determination would apply for the entire GMP #2, including all change orders.*
- *Example: The same as both examples above AND thereafter, the general contractor published an advertisement for construction services to subcontractors on March 14, 2022 for GMP #3 for Phase #3, to be covered under yet another contract amendment. The applicable wage determination for GMP #3 is 2022-1. This wage determination would apply for the entire GMP #3, including all change orders.*

**7. What is the bid advertisement date and the applicable prevailing wage determination for a contract or a contract amendment which adds a Guaranteed Maximum Price (GMP) for construction services with multiple District defined phases of construction within that singular GMP associated with a LLB project?**

For a contract or a contract amendment **with only one GMP that has multiple District defined phases of construction**, the construction services in the singular GMP will be published in an advertisement by the general contractor to subcontractors. The advertisement for the singular GMP will be used to establish the applicable prevailing wage determination for all phases of construction within that GMP. While the general contractor may decide to publish multiple advertisements (*i.e.*, to solicit better pricing or other business reasons) for different phases within this singular GMP, only the first bid advertisement published will be used to establish the applicable prevailing wage determination for that entire GMP, regardless of the number of phases within that singular GMP.

- *Example: The general contractor first published an advertisement for construction services to subcontractors for Phase 1 out of two District defined phases within that singular GMP on September 10, 2021. The general contractor published an additional advertisement for construction services for Phase 2 out two District defined phases within that singular GMP on March 14, 2022. The applicable bid advertisement date is September 10, 2021 for both Phase 1 and Phase 2. The applicable wage determination for both Phase 1 and Phase 2, including all change orders, is 2021-2.*

**8. Will each contract amendment for construction services associated with a LLB project be registered with DIR?**

Yes. For each contract amendment for construction services, the District will submit a separate PWC-100 form to DIR for **each** District defined GMP phase associated with a LLB project. Each contract amendment for construction services with its own GMP phase will have its own separate DIR Project ID number.

**9. Will the general contractor be required to submit separate subcontractor lists, a first and a final, for preconstruction services, associated with a LLB project?**

Yes. The general contractor will be required to submit (a) a subcontractor list **prior to award** and (b) a comprehensive list of all subcontractors, regardless of tier and who performed work, if any, before the District will issue final payment. The general contractor must also submit a first subcontractor list and final subcontractor list for each contract amendment for additional preconstruction services under an additional District defined phase.

**10. Will the general contractor be required to submit separate subcontractor lists, a first and a final, for each contract amendment for construction services associated with a LLB project?**

Yes. For **each** contract amendment for construction services, the general contractor will be required to submit (a) a subcontractor list **prior to award** and (b) a comprehensive list of all subcontractors, regardless of tier and who performed work on the amendment for construction services before the District will issue final payment.

**11. Will the general contractor be required to update the subcontractor list for each contract and each contract amendment associated with a LLB project?**

Yes. For the contract for preconstruction service and **each** subsequent contract amendment for construction services, the general contractor will be required to provide an updated subcontractor list before any new subcontractor, regardless of tier, may start work under the contract amendment for construction services.

**12. Will the District file one Notice of Completion (NOC) at the end of the Project, even though there are multiple contract amendments for construction services?**

Yes. The District will file a single NOC upon completion of all construction services for the entire Project, upon final completion of the Project.