THE CITY OF NEW YORK
OFFICE OF THE COMPTROLLER

INTERNAL CONTROL AND ACCOUNTABILITY DIRECTIVES

DIRECTIVE 7 - AUDIT OF REQUESTS FOR PAYMENT RECEIVED UNDER CONTRACTS FOR CONSTRUCTION, EQUIPMENT, AND CONSTRUCTION-RELATED SERVICES

INTRODUCTION AND SUMMARY

The purpose of this Directive is to provide guidelines that the agency Engineering Audit Officers ("EAO") must use for auditing payment requests received under construction, equipment, and construction-related service contracts prior to processing the requests in the City's Financial Management System ("FMS Accounting"). Prior to an Agency approving such payment requests, the EAO must audit such payment requests to ensure that the City of New York ("City") has received appropriate value. The Directive's provisions, where appropriate, must be integrated into agency operating practices and reflected in construction, equipment and construction-related service contracts.

1.0 GENERAL INFORMATION

1.1 Organization

1.0 General Information
2.0 The Engineering Audit Officer's Appointment and Qualifications
3.0 Audit Guidelines
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1.2 Effective Date

This Directive is effective immediately, and supersedes the prior version dated November 21, 1995.

1.3 Assistance

Questions or comments concerning this Directive should be addressed to: the Chief Engineer, Bureau of Engineering, 1 Centre Street, Room 650, New York, NY 10007, (212) 669-2037, Email: Engineer@comptroller.nyc.gov

1.4 Comptroller Authority

This Directive is issued pursuant to the City of New York ("City"), Office of the Comptroller's ("Comptroller") authority as established in Chapter 5, Section 93(h) of the *New York City Charter*.

1.5 Internet Availability

An inventory of existing Comptroller's Internal Control and Accountability Directives, most with download and print capability, are available on the Comptroller's website at http://www.comptroller.nyc.gov. Directives without download capability may be obtained by contacting the Directives Unit at (212) 669-8216, Email: directives@comptroller.nyc.gov.

2.0 THE ENGINEERING AUDIT OFFICER'S APPOINTMENT AND QUALIFICATIONS

Each agency that frequently lets contracts for construction, equipment, and construction related services must appoint an EAO in accordance with the requirements set forth below:

- The EAO must be an agency employee appointed by the agency head.
- The EAO must report directly to the agency head, or to a deputy agency head ("designee") which the agency head may assign. However, the designee must not be directly responsible for the agency's design or construction functions.
- To preserve the EAO's independence and the integrity of the audit process, it is essential that the EAO's duties be fully segregated from any related operational responsibilities. The EAO must not report to nor receive direction from a purchase officer, construction officer, the purchase or construction officer's supervisors, or others directly or indirectly involved in the operational and programmatic functions related to the EAO's audits, except that EAO may require the advice of agency counsel during the course of the audit process.
- The EAO must be a New York State licensed Professional Engineer or Registered Architect, preferably with New York City municipal engineering experience. Staff members reporting to the EAO are not necessarily required to be engineers or architects; however, they must have appropriate construction and/or audit experience.

- Agencies must register the name, functional title and signature specimen of the EAO and a designated alternate EAO, and the name and functional title of the agency head's designee with the Comptroller's Chief Engineer. A designated alternate EAO must be an agency employee. Agencies must also register the EAO's and alternate EAO's signature specimen with the Comptroller's Bureau of Accountancy, 1 Centre Street – Room 800, New York, NY 10007.

3.0 AUDIT GUIDELINES

The EAO's primary function is to audit contractor, vendor, and consultant payment requests prior to approval of FMS Accounting payment requests for construction, equipment, and construction-related service contracts, in accordance with this Directive's audit guidelines.

3.1 General Guidelines

3.1.1 Basic Audit Approach

The EAO must follow appropriate audit procedures to ensure that the payment requests are justified. For competitively bid and awarded contracts, the EAO must ensure that the contractor or vendor has fulfilled its contractual obligations, and that the City has received appropriate value, under the terms of the contract, for the payment requested. For change orders, or contracts which were not competitively awarded, the EAO must also ensure that the change order or contract costs are reasonable, consistent with both the contract and/or the change order terms and adequately documented, as herein provided.

3.1.2 EAO Judgment

The EAO must use the guidelines provided in Sections 3.2 through 3.8 for conducting the audits. Because audit procedures will vary depending on the nature of the work or project, the type of payment requested, and the state of work completion, these guidelines are not intended to provide audit procedures for every circumstance. In situations not specifically addressed herein, the EAO is expected to exercise professional judgment, consistent with the intent of these guidelines, to determine the nature and extent of the audit procedures necessary for evaluating the payment request under review. In such instances, the EAO may add to, modify or omit audit steps as he or she deems appropriate.

3.1.3 Prompt Audit/Payment Processing

EAOs must:

(a) Process payment requests in a time frame consistent with the Procurement Policy Board Rules ("PPB Rules"), to ensure timely payments to contractors, vendors, and consultants.

(b) Maintain records of payment requests received, and in process.

3.1.4 Consultation

The EAO may contact the Comptroller's Chief Engineer for consultation and advice when evaluating engineering-related matters in connection with their audits.

3.2 Field Audits

An essential EAO audit procedure is the performance of field visits to physically verify requested payment amounts and to evaluate the quality and progress of the work in question. The frequency and timing of field visits is at the EAO's discretion, which must be exercised in accordance with the following guidelines.

3.2.1 Field Visit Frequency and Timing

The frequency of field visits may vary according to factors such as the type of contract and the size and complexity of the project. Generally, field visits are to be conducted whenever the payment request is based upon work performed, subject to the provisions below.

The proper timing of field visits is essential in order to discover errors, flawed construction and other problems before their detection would be precluded by subsequent activity. However, the EAO and staff may defer a field visit when it is not reasonably practicable to conduct a timely field audit, and when, in his or her professional judgment, the nature of the work for which payment is sought permits verification on a subsequent visit.

3.2.2 Field Visit Intervals

Field visits must be performed but are not limited to the following work intervals, where appropriate:

(a) At the completion of important work phases including that of major structural components, equipment installation, and substantial completion. In the case of separate consultant or other related contracts, at the submission of schematics, preliminary drawings, or the submission of draft final reports.

(b) At predetermined points including contract milestones or significant activities on Critical Path Method ("CPM") schedules, where construction progress becomes visible, or when major system tests are conducted.

(c) Whenever a desk audit or other information discloses discrepancies or other problems.

(d) Whenever subsequent work site activity would preclude the discovery of errors, flawed construction, installation, or other problems.

3.2.3 Field Audit Procedures

Field audit procedures must include, as appropriate:

(a) Verification that all required permits have been obtained.

(b) Verification that work has progressed sufficiently to warrant the payment requested.

(c) Verification that construction conforms to the plans and specifications and/or applicable standards.

(d) Verification of costs based on a sampling of items listed on the contractor's or vendor's requisition.

(e) Verification that variances, including, but not limited to variances in the original contract amount, changes in bid quantities greater than 125%, and variances in change order work, are accurate and justifiable, and that the change is not detrimental to the City.

(f) If the field audit is for a construction contract, verification that the contractor is in compliance with NYS prevailing wage requirements. (See Section 3.8 for specific audit requirements.)

(g) Viewing of tests or operational demonstrations. When possible, such visits should be coordinated with the construction staff.

(h) The examination of original source documents, including daily construction reports, invoices, paid bills, time sheets, payroll journals, expense accounts, checks and other records, for time and material change orders, negotiated change orders without an established cost history, and cost-plus contracts.

(i) Use of random sampling methodology to select locations for audit in instances of multi-site contracts where field audit of all sites is impractical or cost prohibitive. Adequate documentation of the sampling method must be included in the audit work papers.

3.3 Desk Audits

If the EAO decides to defer a field audit (in accordance with Section 3.2.1 of this Directive), the in-office or "desk" audit must nevertheless be performed. When payments are authorized based solely on a desk audit, the EAO's records must clearly record the reasons that the field audit was not conducted. When desk audits are conducted, field audit procedures must be performed subsequently to ensure that the payment based on the desk audit was proper.

3.3.1 Desk Audit Procedures

Desk audits must include, as appropriate:

(a) Spot checks for accuracy of prices, quantities, and calculations.

(b) Spot checks of material quality tests and certifications for compliance with specifications.

(c) Review of resident engineer, inspector, other project personnel, and contractor submitted reports and certifications.

(d) Verification that any non-competitively bid contract and/or changes to a contract have received all required approvals.

3.4 Contract Audits

For each contract type that follows, the EAO must ensure that the contract progress, costs, conformance, and changes are adequately documented.

3.4.1 Construction Contracts

"Construction" as defined by the PPB Rules is the process of constructing, reconstructing, demolishing, excavating, renovating, altering, improving, rehabilitating, or repairing any building, facility, or physical structure of any kind, excluding the performance of routine maintenance.

When auditing payments requested under construction contracts, the EAO must:

(a) Determine that completed work is in accordance with the plans and specifications, is sufficiently advanced to warrant the requested payment, and that payment on lump sum contracts is proportional to the percent of work completed, consistent with the contract terms and approved payment schedule.

(b) For unit price contracts, perform spot checks for accuracy of entered prices, quantities and calculations.

(c) For substantial or final completion payments, determine that the work under the project is satisfactorily completed in accordance with contract drawings and specifications, that all required approvals have been obtained and, if there is a late completion, that liquidated damages were addressed pursuant to the Contract, and that a time extension for substantial or final payment has been approved by the Board of Time Extension pursuant to the PPB Rules and the Contract.

(d) Verify that the contractor is in compliance with NYS prevailing wage requirements. (See Section 3.8 for specific audit requirements.)

3.4.2 Construction Related Services

As defined by the PPB Rules, contracts for Construction-Related Services are those services that may reasonably be required in the planning, design, or construction of real property or other public improvements; such services shall include, but not be limited to, such services as architecture, engineering, construction supervision, construction management, planning, surveys and reports, testing and investigation, and printing and blueprinting.

When auditing payments requested under consultant services contracts, the EAO must:

(a) Review all payments to ensure compliance with the contract terms and any subsequent contract modifications/changes.

(b) Determine if the work has advanced sufficiently to justify the payment requested.

(c) Determine that the technical effort expended is commensurate with the contract's budgeted task allotments.

(d) Determine whether salary rates are in compliance with the terms of the contract. For those contracts providing for an allowance for rate escalation, unless otherwise stated, use the Bureau of Labor Statistics' "Employment Cost Index for Professional Specialty and Technical Workers."

(e) When applicable, perform an audit of the overhead multiplier as stipulated by contract or Comptroller's Internal Control and Accountability Directive 2, *Procedures for the Audit of Vouchers Submitted Under Cost Reimbursable Contractual Agreements.*

(f) For final payments, determine that all work has been satisfactorily completed and accepted by the agency.

(g) For construction-related consultant supervision contracts, where feasible, compare the work force anticipated under the contract terms with actual time records for the project. For significant variances ensure there was appropriate justification, documentation and approvals.

(h) For construction-related consultant supervision contracts, review the field records and inspection procedures (e.g., testing) for compliance with specifications and applicable standards.

(i) When reviewing change orders providing for an increase in hours, ensure

that hours remaining in the original contract have been accounted for.

Audits of payment requests under construction-related service contracts with cost reimbursable provisions must also be carried out in accordance with the Comptroller's Internal Control and Accountability Directive 2, *Procedures for the Audit of Vouchers Submitted Under Cost Reimbursable Contractual Agreements* and, where applicable, OMB's Construction Standards.

3.4.3 Emergency Contracts

The need to expedite the letting of contracts in emergency situations often results in less than optimum competition. The resulting "emergency contracts" may pose a problem for the EAO because work is frequently completed before the opportunity for a field visit. It is, therefore, essential that agencies establish procedures to inform the EAO early in the emergency procurement process. It is also essential that agency personnel monitoring this work maintain detailed chronological records of the work done. When auditing payment requests for emergency contracts, the EAO must:

(a) Review resident engineer daily reports and/or inspection reports to determine whether payment is justified.

(b) Verify that the contractor is in compliance with NYS prevailing wage requirements. (See Section 3.8 for specific audit requirements.)

(c) Submit results of adverse audit findings to the agency head, including, but not limited to, when the value of the work performed appears to be significantly less than the awarded amount.

3.4.4 Purchase Contracts for Mechanical, Electrical and Other Equipment

The EAO may be responsible for the audit of certain mechanical, electrical, and other equipment purchases (excluding office supplies or furnishings) charged to either the expense or capital budget.

When conducting audits of such payment requests, the EAO must ensure that:

(a) Delivery and acceptance are proper and in accordance with contract terms.

(b) Required inspections have been made by designated agency personnel for compliance with contract requirements.

(c) Required test data is on file, and has been accepted by the agency.

(d) A field visit is conducted to physically verify equipment.

3.5 Auditing Contract Changes

As work progresses, circumstances may necessitate changes in the terms and conditions of the original contract. Such changes will require varying approvals depending on the nature and magnitude of the change. The EAO must ensure that all appropriate approvals are in place and must refer to the PPB Rules, directives issued by the Mayor's Office of Contract Services ("MOCS") (including former Office of the Director of Construction ["ODC"] Directives), and applicable OMB Construction Standards for guidelines and requirements for changes to contract work. The EAO shall not authorize any payments for change order work until the change orders have been registered with the Comptroller's Office, unless otherwise provided for in the contract.

3.5.1 Contract Changes

In accordance with the PPB Rules, all changes to a contract shall be reflected in a change order document. In addition, contract changes are permitted only for work necessary to complete the work included in the original scope of the contract, and for non-material changes in the scope of the contract. Generally, change orders are utilized when an increase or reduction in work is required provided such work does not constitute a material change in scope.

When reviewing change order proposals, and/or auditing change order costs/payments, the EAO must:

(a) Review the appropriateness of the change order classification (e.g., design error, administrative change, etc.) and ensure that there is sufficient documentation to validate the reason for the classification;

(b) Evaluate the change order to ensure that it is not for work already required by the contract;

(c) Determine that completed work is in accordance with the plans and specifications and is sufficiently advanced to warrant the requested payment, consistent with the contract and change order terms, and

(d) Ensure that change order costs are reasonable based on appropriate price and cost analysis, consistent with the contract terms and adequately documented in accordance with the PPB Rules, and as follows:

Negotiated Change Orders shall be supported by:

1. Documented experience on similar work for which a cost history is available, and/or
2. Documented bid unit price experience which supports the cost reasonableness, and/or
3. Documented industry estimating publications supporting cost

reasonableness.

4. Where there is no established cost history, support for the cost negotiation shall include but not be limited to:
    a) Labor rates and mark-up;
    b) Crew sizes, compositions, and production rates for the respective work activities;
    c) Equipment description and estimated times of utilization; and
    d) Material volumes and costs.

5. Where a post-audit of a negotiated change order reveals that there was a substantial material reduction in the agreed upon work product, the price of the change order shall be proportionately reduced and any overpayment recouped. Where the cost of the change order has been negotiated in absence of an established cost history as set forth in subdivision d.4. above, and a post-audit reveals what appears to be a gross error or other significant factor which will likely result in a windfall to the contractor, the EAO must notify the agency head. If the audit reveals what appears to be potential fraud or a blatant misrepresentation of any negotiated cost component(s), the EAO must follow the reporting requirements in Mayoral Executive Order 16, Section 4.d., "Investigations."

Time and Materials Change Orders and Change Orders negotiated without established cost history are subject to the following cost principles:

1. Direct cost allowances for contractor-owned equipment shall be as specified under the contract (currently Article 26 of the Standard Construction Contract), and, when applicable, at such rates as MOCS and the Comptroller may from time to time direct; and

2. Labor allowance shall be based on actual and reasonable labor rates, which for those contracts requiring compliance with New York State Labor Law, Article 8, §220, shall be, at a minimum, at those rates contained in the Comptroller's published "Schedule of Prevailing Wages and Supplemental Benefits" with appropriate supplemental benefits in effect at the time the work was performed; and

3. Material and insurance allowances shall be supported by sufficient samplings of the contractor's original business records to conform to generally accepted auditing principles.

(e) For unit price contracts, ensure that contract unit prices, when applicable to the scope of the extra work, have been utilized in the change order to the extent possible.

(f) During the change order review process, when there are disagreements as to the appropriateness of a change order or the reasonableness of the negotiated cost, and the EAO and the Engineer cannot come to an agreement, the Engineer and/or the EAO may bring this internal disagreement to the agency head, or designee. Should the agency head, or designee, agree with the EAO, the contractor shall be so notified of the EAO's determination. Should the contractor disagree with the EAO determination, it may present a Notice of Dispute to the agency head in accordance with the PPB Rules and the contract.

(g) For design errors and omissions, the EAO shall confirm that a copy of the change order was forwarded to the agency General Counsel for possible recoupment, in accordance with ODC Directive No. 47- Amendment 1, or subsequent directives.

(h) Changes Due to Unforeseen Subsurface Conditions:

When a condition at the site is encountered, which is materially different from what is depicted on the contract drawings or indicated in the specifications, and the existence of which will materially affect the cost of the work to be performed under the contract, a Changed Condition may be declared by the agency head, or designee, depending on the specific provisions of the contract. To be considered unforeseen, the condition could not have reasonably been anticipated by the contractor nor anticipated by the City.

The resolution of an unforeseen subsurface condition will often eliminate the physical evidence of the condition. Therefore, upon notification, the EAO should schedule a site visit as soon as possible. The agency staff monitoring the work must adequately document such conditions in the form of photographs, samples, field records, tests, and any other suitable method.

The Comptroller's Bureau of Engineering becomes involved only if agreement cannot be reached and, as a result, the dispute resolution process is utilized.

3.5.2 Material Changes in Scope

In accordance with the PPB Rules, contract change orders are not permitted for material alterations in the scope of work.

Material alterations in the scope of work may be made only by a new procurement pursuant to one of the methods of source selection set forth in the PPB Rules. Applicable OMB Construction Standards must be used.

New procurements for material alterations to the scope of work must be audited by the EAO in accordance with the applicable guidelines contained herein.

3.6 Substantial Completion

Upon substantial completion of a project, as defined in the contract, the EAO must perform a comprehensive review of payments and conduct a field visit to verify that all work has been satisfactorily and substantially completed under the terms of the contract, or that incomplete work, including all punch list items (as-built drawings included) has been identified, evaluated based on a cost-to-complete basis, and certified by the resident engineer. The EAO must ensure that for incomplete work, twice the amount of the cost-to-complete has been withheld in accordance with the contract (currently Article 44.3 of the Standard Construction Contract). The EAO should ascertain whether all applicable deductions, such as liquidated damages when recommended in the time extension for substantial payment, established disincentive assessments, or other appropriate temporary or permanent withholdings, have been taken.

Subsequent field visits, as may be necessary through final payment, must be performed at the discretion of the EAO to identify necessary adjustments before final payment is approved.

3.7 Guarantee/Retention Payments

Upon substantial completion, acceptance of work for occupation or use prior to final acceptance (currently Article 16 of the Standard Construction Contract), or after a contract specified guarantee period, contractors may request the release of funds retained by the City as security, as provided for in the contract. Such requests must be certified by the agency representative responsible for the project prior to the EAO's review. Before approving the release of funds, the EAO must review the project, including a site visit where needed, to verify that all work is in compliance with contract terms.

3.8 Contractor Compliance with Prevailing Wage Requirements

For construction and emergency contracts, the EAO must include the following audit procedures to ensure contractor compliance with prevailing wage requirements:

(a) Verification that the contractor is compliant with New York State Labor Law, Article 8, §220, paragraph 3-a.a (A copy of which is provided as Attachment A). Verification must include ensuring that contractors post prevailing wage notices properly at the job site(s), that the posting(s) include all trades associated with the contract, and that the posted wages are in conformance with the prevailing wages for the respective trades. Further, each contractor and every sub-contractor must issue detailed pay stubs to each tradesperson, identifying the hourly rate of wage and work classification.

(b) Sufficient audit tests of the following records to verify the contractor's compliance with the prevailing wage rates:

i) Periodic certified payrolls showing all individual trade employees, and

ii) Daily sign in sheets signed by each worker showing time in and out, and
iii) Construction management labor inventories from the daily construction diaries, and
iv) Actual wages and benefits paid and/or provided to employees.

In the event the EAO finds that the above records are inconsistent with each other and/or with the prevailing wage, the EAO must withhold from payment sufficient funds to cover the difference as well as 16 percent per annum simple interest. If there are insufficient monies in the contract under audit to satisfy the deficiency, the EAO may withhold the outstanding difference from other contracts under audit with the contractor.

4.0 ENGINEERING AUDIT OFFICER CERTIFICATION

After an audit has been completed to the satisfaction of the EAO or duly authorized designee of the EAO, he or she must approve the payment request by signing and dating the appropriate certification.

4.1 EAO Certifications

The EAO's approval of a payment request shall have the full weight of the following certification:

> *I certify that I or my duly authorized designee have independently examined this payment request, have reviewed adequate supporting documentation certified by appropriate personnel, and have performed site inspection(s), where needed, to verify the approved payment. The payment is just and reasonable under the terms of the contract.*

This certification must be made without qualification. In cases where the EAO finds that a payment is not fully justified, he or she must not approve the payment request until the exceptions are resolved. However, the EAO may, and is encouraged to, release an appropriate amount of the uncontested portion of the payment. In releasing any uncontested portion, particularly in the case of a substantial completion payment, the EAO must confirm that sufficient funds remain available to ensure completion by the contractor or to fully cover the cost of completion by others, and to cover liquidated damages, if necessary. In those cases where an adjustment has been made, the EAO must ensure that the request reflects the adjustment. The EAO shall notify the responsible agency engineer of the adjustment, who must so notify the contractor.

4.2 EAO Independence/Certification

The EAO's function, in essence, is to perform an independent final review prior to payment. The EAO, therefore, must not:

(a) Initiate payment requests

(b) Sign the payment request's agency certification

(c) Sign payment requests prior to the receipt of agency certifications from the agency engineer, project manager, or other authorized approval signatories.

4.3 Questioned Payments

If, as a result of the audit, the EAO finds that he or she cannot certify that the requested payment or a portion thereof is justified, and the EAO and the Engineer cannot come to an agreement, the Engineer and/or the EAO may bring this internal disagreement to the agency head, or designee by submittal in writing, with a copy to each other.

Should the agency head, or designee, agree with the EAO's determination, the contractor shall be so notified. Should the contractor disagree with the EAO determination, it may present a Notice of Dispute to the agency head in accordance with the PPB Rules and the contract.

Should the agency head, or designee, disagree with the EAO's determination, the questioned payment or a portion thereof may be approved only upon written direction of the agency head, or designee, who must sign the payment request in lieu of the EAO. The agency must notify the contractor of the amount of any remaining payment reduction along with the reasons for same.

5.0 SUPPORTING DOCUMENTATION AND RECORD KEEPING

5.1 Agency Responsibilities

EAO audits and EAO compliance with this Directive are dependent on the availability of agency and contractor records. Agencies must ensure that the records referenced herein and all other appropriate documentation, are maintained and made available to the EAO for audit purposes.

Agencies must also ensure that their contracts incorporate provisions which require contractors to employ appropriate accounting and record keeping systems, contain provisions providing EAO the right to conduct audits and provide EAO staff access to all records.

5.2 EAO Responsibilities

After completion of the audit, the EAO must retain all notes, documents, reports and recommendations. The documentation must be sufficiently thorough to support the audit findings, payment certifications, disputed payments or any other action taken. These records, which must be retained in a safe and secure condition and location, are subject to post-audit by the Comptroller and are essential for dispute resolution, claim investigation and litigation purposes. All records and contract files shall be retained for a period of time no less than that specified by the PPB Rules.

If any audit reveals what appears to be potential fraud, the EAO must follow the reporting requirements in Mayoral Executive Order 16, Section 4.d., "Investigations".

ATTACHMENT A

NEW YORK STATE LABOR LAW, ARTICLE 8, §220, PARAGRAPH 3-a.a

For EAO convenience, the complete text of New York State Labor Law, Article 8, §220, paragraph 3-a.a is reproduced here.

3-a. a.

(i) It shall be the duty of the department of jurisdiction as defined in this section to ascertain from the plans and specifications the classification of workers, mechanics and laborers to be employed on such project. Such department shall file with the fiscal officer, as defined in this section, the classification of workers, mechanics and laborers to be employed upon such public works project, together with a statement of the work to be performed by each such classification. From such statement it shall be the duty of the fiscal officer to make a proper classification of such workers, mechanics and laborers taking into account whether the work is heavy and highway, building, sewer and water, tunnel work or residential and to make a determination of the schedules of wages and supplements to be paid or provided, as the case may be, therefor.

(ii) [As amended L 2008, chs 7 and 63] The contractor and every sub-contractor on public works contracts shall post in a prominent and accessible place on the site where the work is performed a legible statement of all wage rates and supplements as specified in the contract to be paid or provided, as the case may be, for the various classes of mechanics, workers, or laborers employed on the work. Such posted statement shall be written in plain English and titled, in lettering no smaller than two inches in height and two inches in width, with the phrase "Prevailing Rate of Wages". Such posted statement shall be constructed of materials capable of withstanding adverse weather conditions. The contractor and every sub-contractor shall notify all laborers, workers or mechanics in their employ in writing of the prevailing rate of wage for their particular job classification. Such notification shall be given to every laborer, worker or mechanic on their first pay stub and with every pay stub thereafter. At the beginning of performance of every public works contract, and with the first paycheck after July first of each year, the contractor and every sub-contractor shall notify all laborers, workers, and mechanics in their employ in writing, in accordance with such form as is prescribed by the [fig 1] fiscal officer, of the telephone number and address for the [fig 2] fiscal officer. The notice shall also inform each laborer, worker, or mechanic of his or her right to contact the [fig 3] fiscal officer or some other representative if, at any time while working for the public works contractor or sub-contractor, he or she does not receive the proper prevailing rate of wages or supplements for his or her particular job classification that he or she is entitled to receive under the contract. If after investigation the [fig 4] fiscal officer finds that a contractor or sub-contractor has (1) failed to post any notice required under this subdivision, (2) failed to set forth the prevailing wage on the pay stub, (3) wilfully posted the incorrect prevailing wage, or (4) wilfully set forth the incorrect prevailing wage on the pay stub, the [fig 5] fiscal officer, shall by an order which shall describe particularly the nature of the alleged violation, assess the contractor or sub-contractor a civil penalty of not more than fifty dollars upon the first finding of a violation, two hundred fifty dollars upon the second finding of a violation, and five hundred dollars for each subsequent violation. In assessing the amount of the penalty, the [fig 6] fiscal officer shall give due consideration to the size of the employer's business, the good faith of the employer, and the gravity of the violation.

(iii) [As amended L 2008, chs 7 and 63] The contractor and every sub-contractor shall keep original payrolls or transcripts thereof, subscribed and sworn to or affirmed by him or her as true under the penalties of perjury, setting forth the names and addresses and showing for each worker, laborer, or mechanic the hours and days worked, the occupations worked, the hourly wage rates paid and the supplements paid or provided. Where the contractor or sub-contractor maintains no regular place of business in New York state and where the amount of the contract is in excess of twenty-five thousand dollars such payrolls shall be kept on the site of the work. All other contractors or sub-contractors shall produce within five days on the site of the work and upon formal order of the commissioner or his or her designated representative such original payrolls or transcripts thereof, subscribed and sworn to or affirmed by him or her as true under the penalties of perjury, as may be deemed necessary to adequately enforce the provisions of this article. Every contractor, and sub-contractor, shall submit to the department of jurisdiction within thirty days after issuance of its first payroll, and every thirty days thereafter, a transcript of the original payroll record, as provided by this article, subscribed and sworn to or affirmed as true under the penalties of perjury. Any person who wilfully fails to file such payroll records with the department of jurisdiction shall be guilty of a class E felony. In addition, any person who wilfully fails to file such payroll records within the time specified in this

subparagraph shall be subject to a civil penalty of up to [fig 1] one thousand dollars per day.

(iv) [As amended L 2008, chs 7 and 63] The department of jurisdiction shall be required to collect and maintain such payroll records at the times specified in subparagraph (iii) of this paragraph. The original payrolls or transcripts shall be preserved by the department of jurisdiction for five years from the date of completion of the work on the awarded contract. The department of jurisdiction as herein referred to shall be the department of the state, board or officer in the state, or municipal corporation or commission or board appointed pursuant to law, whose duty it is to prepare or direct the preparation of the plans and specifications for a public work project. Each department of jurisdiction shall designate in writing an individual employed by such department responsible for the receipt, collection and review for facial validity of [fig 1] payrolls. Said designation shall be filed with the fiscal officer and posted in a conspicuous location at the project site. If the designated individual cannot perform the receipt, collection and review of certified payrolls duties as indicated above, for any reason, including but not limited to reassignment, promotion or separation from employment, the department of jurisdiction must immediately designate another individual employed by such department to fulfill such responsibilities. In the event that a department of jurisdiction fails to name an individual responsible for the receipt, collection and review for facial validity of [fig 2] payrolls, as set forth above, then the individual so responsible shall be the individual who is the chief policy-making individual of such department of jurisdiction.