

## Contracting Methods for Maintenance Tasks

### **Introduction**

Work on CSU facilities is categorized as either a “project” and performed in accordance with State University Administrative Manual (SUAM) 9700 or as “maintenance” and performed in accordance with ICSUAM 5000, Policy Manual for Contracting & Procurement. To determine the appropriate work category for a specific intended scope of work, apply the definition of “project” found in CSU Contract Law (Public Contract Code section 10700 *et seq.*) and the definition of “maintenance” found in California Code of Regulations section 16000. In addition, Labor Code is also cited to clarify when payment of prevailing wages is required.

These guidelines have been created to assist campus procurement staff in determining work categories and which contract methodology to use when contracting for maintenance. The guidelines have three sections: Introduction, Relevant Laws and Code, and Commentary, and we have included “Examples of Contracting Methodologies for Maintenance Tasks”, a table which lists examples of work, and recommended contract methodologies for each.

### **Relevant Laws and Code**

#### Definition of Project

Public Contract Code, Section 10701:

As used in this chapter:

- (a) "Project" includes the erection, construction, alteration, painting, repair, or improvement of any state structure, building, road, or other state improvement of any kind. "Project" includes a project located on California State University property and performed pursuant to a contract entered into or awarded by an auxiliary organization, as defined in Section 89901 of the Education Code, and funded in whole or in part by public funds.
- (b) "Service contract" means any contract for services in connection with a project other than a project contract, and includes, but is not limited to, contracts for architectural, engineering, planning, testing, general studies, or feasibility services.
- (c) "Trustees" means the Trustees of the California State University and their designees.

#### Definition of Public Works

Labor Code, Sections 1720 – 1720.6, only portions of 1720 reprinted here:

- (a) As used in this chapter, "public works" means:
  - (1) Construction, alteration, demolition, installation, or repair work done under contract and paid for in whole or in part out of public funds, except work done directly by any public utility company pursuant to order of the Public Utilities Commission or other public authority. For purposes of this paragraph, "construction" includes work performed during the design and preconstruction phases of construction including, but not limited to, inspection and land surveying work.
  - (4) The laying of carpet done under a building lease-maintenance contract and paid for out of public funds.
  - (5) The laying of carpet in a public building done under contract and paid for in whole or in part out of public funds.

### Prevailing Wage Required

Labor Code, Section 1771

Except for public works projects of one thousand dollars (\$1,000) or less, not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the public work is performed, and not less than the general prevailing rate of per diem wages for holiday and overtime work fixed as provided in this chapter, shall be paid to all workers employed on public works.

This section is applicable only to work performed under contract, and is not applicable to work carried out by a public agency with its own forces. This section is applicable to contracts let for maintenance work.

### Definition of Maintenance

California Code of Regulations

Title 8. Industrial Relations

Division 1. Department of Industrial Relations

Chapter 8. Office of the Director

Subchapter 3. Payment of Prevailing Wages Upon Public Works

Article 1. Definitions

16000. Definitions.

Maintenance. Includes:

- (1) Routine, recurring and usual work for the preservation, protection and keeping of any publicly owned or publicly operated facility (plant, building, structure, ground facility, utility system or any real property) for its intended purposes in a safe and continually usable condition for which it has been designed, improved, constructed, altered or repaired.
- (2) Carpentry, electrical, plumbing, glazing, [touchup painting,] and other craft work designed to preserve the publicly owned or publicly operated facility in a safe, efficient and continuously usable condition for which it was intended, including repairs, cleaning and other operations on machinery and other equipment permanently attached to the building or realty as fixtures.

Exception: 1: Janitorial or custodial services of a routine, recurring or usual nature is excluded.

Exception: 2: Protection of the sort provided by guards, watchmen, or other security forces is excluded.

- (3) Landscape maintenance. See Public Contract Code Section ~~24002~~ 22002\*.

Exception: Landscape maintenance work by "sheltered workshops" is excluded.

\*Error in citation: confirmed by Westlaw.

### **Commentary**

The definition of Project includes the phrase "improvement of any state structure". It could be argued that maintenance and repair are improvements and therefore, create a conflict between the definitions of Project and Maintenance work. However, it is the impetus of the work that determines the category or work (Project or Maintenance), not the incidental consequences. For example, a light bulb burns out, and it is replaced with an energy efficient bulb. That is maintenance work. The reason the work took place (replacing the light bulb) was to correct a condition (the burnt out bulb) to keep the facility operating in the manner for which it was intended. On the other hand, if the campus decided to replace an operating light bulb with a more energy efficient bulb, that work would be a Project (a tiny project, agreed, but it demonstrates the principle). Still another example: proper maintenance practice does not

wait for light bulbs to burn out and replace them one at a time, but instead to replace bulbs on a cycle as they near the end of their useful life. In this case, operating bulbs could be replaced with more energy efficient bulbs, and the work would be maintenance because the impetus for the work was the continuous operation of the facility with the work performed in an efficient manner.

The table on the following page, “Examples of Contracting Methods for Maintenance Tasks”, provides examples of contracted work and indicates recommended contracting provisions and considerations.

In the first column of the aforementioned table, Samples of Contracted Work, you will see descriptors “simple” or “involved”. These are intended to assist the contracting officer in deciding which contracting method to use. For example, refer to ‘Elevator Repairs (simple)’ and ‘Elevator Repairs (involved)’. “Simple” as used herein is defined to mean a simple repair, one which would not require most or all of the contract provisions found in the construction Contract General Conditions, like liquidated damages, schedule, etc. The contract method of choice for work that is simple in scope may be a service order or agreement. “Involved” is defined to mean a very complex repair, one which would require most or all of the contract provisions found in the construction Contract General Conditions; the contract document of choice for work that is complex in scope would be Project Documents.

Using “Elevator Repairs (simple) as an example of working with the table:

Is it Maintenance? Yes

Is Prev. Rate of Per Diem Wages required? Yes

Can you use a service contract? Yes

Is it a project? No

Should Project Documents be used? No

Using “Elevator Repairs (involved) as another example of working with the table:

Is it Maintenance? Yes

Is Prev. Rate of Per Diem Wages required? Yes

Can you use a service contract? Yes

Is it a project? No

Should Project Documents be used? Yes, recommended.

These are broad guidelines; staff still must exercise judgment in the interpretation and application of laws and policy in contracting for maintenance work. When contracting for maintenance work, consider the following:

- (1) Maintenance work may be contracted as a service order or service contract, and may incorporate contract terms typically associated with projects—or, it may be contracted using project documents and methods.
- (2) Maintenance work is contracted pursuant to ICSUAM 5000.
- (3) Projects must be contracted pursuant to Public Contract Code section 10700 *et seq.* and SUAM XII section 9700.
- (4) Work carried out by CSU forces is not subject to payment of prevailing wage (Labor Code section 1771).

### Examples of Contracting Methods for Maintenance Tasks

Samples of Contracted Work	Is this Work Maintenance or Project?	May Work be Performed as Service?	Use Project Documents?	Must Pay Prevailing Wages? (If >\$1,000)
Tree Trimming, less than \$1,000	maintenance	yes	not recommended	no
Tree trimming, less than \$50,000	maintenance	yes	optional	yes
Tree trimming (involved)	maintenance	yes	recommended	yes
Landscaping Maintenance	maintenance	yes	not recommended	yes
Streets, New	project	no	required	yes
Street Trees and Landscaping, New	project	no	required	yes
Equipment Upgrade, repairs not needed	project	no	required	yes
Equipment Repairs resulting in upgrade	maintenance	yes	optional	yes
Equipment Repairs (pumps, motors, belts, etc.), (simple)	maintenance	yes	not recommended	yes
Equipment Repairs (pumps, motors, chillers), (major scope, involved)	maintenance	yes	recommended	yes
Elevator Installation	project	no	required	yes
Elevator Maintenance	maintenance	yes	not recommended	yes
Elevator Repairs (simple)	maintenance	yes	not recommended	yes
Elevator Repairs (involved)	maintenance	yes	recommended	yes
Elevator Upgrade	project	no	required	yes
Roofing inspection services	service	yes	not applicable	yes
Roofing, Patch	maintenance	yes	not recommended	yes
Roofing, Replacement	maintenance	yes	recommended	yes
Drop Ceiling Installation, New	project	no	required	yes
Drop Ceiling Repair	maintenance	yes	not recommended	yes
Carpet replacement	maintenance	yes	not recommended	yes
Carpet installation as Part of a Project	project	no	required	yes
Painting, touchup	maintenance	yes	not recommended	yes
Painting a Building, New	project	no	required	yes
Painting, Re-painting a Building	project	no	required	yes
Abatement for repairs	maintenance	yes	not recommended	yes
Abatement Facility Improvement	project	no	required	yes
Storm Drainage System, New	project	no	required	yes
Wastewater Utility System, New	project	no	required	yes
Water Systems, New	project	no	required	yes
Fencing, New	project	no	required	yes
Construction, New	project	no	required	yes
Custodial	service	yes	not applicable	no
Janitorial	service	yes	not applicable	no
Windows Repaired	maintenance	yes	not recommended	yes
Windows replaced because not functioning properly, entire building (better glazing)	maintenance	yes	recommended	yes
Windows replaced solely to improve energy efficiency	project	no	required	yes