



School Business Law Update

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LABOR COMPLIANCE – SBX2-9

On February 20, 2009, Governor Schwarzenegger signed into law SBX2-9, which amended several Labor Code statutes concerning the use of labor compliance programs (“LCPs”) on specified public works projects. The amendments require that awarding bodies that do not operate their own LCP will be required to pay a fee to the Department of Industrial Relations (“DIR”) for prevailing wage monitoring and enforcement by DIR. DIR has begun formal rulemaking to establish the regulations that will govern fee-based monitoring of public works projects that are funded in whole or in part by state-issued bond funds.

Under the new provisions of SBX2-9, districts that contract with a third party LCP on future projects would also be required to pay the fee to DIR. This will likely result in third party LCPs exiting the business as districts choose not to spend the extra money.

The more likely scenarios for compliance will be that districts will choose to only pay a fee to DIR; or, continue to operate their own approved LCPs and receive a waiver of the fee. Contractors will be required to submit their certified payroll records directly to DIR on the projects it monitors. The requirement for payment of a fee to DIR will only apply to public works contracts awarded after the new fee and regulations have been adopted. DIR anticipates implementing the new fee and regulatory changes in early 2010 and will provide notice to public agencies of their effective date.

The proposed revisions to Title 8 of the California Code of Regulations, Sections 16421-16439, 16450-16455 and 16460-16464 can be divided into four parts: (1) revisions to the LCP regulations in Subchapter 4 of Chapter 8; (2) a new set of regulations governing notices, fees and fee waivers under SBX2-9, which will constitute Article 1 of a new Subchapter 4.5 of Chapter 8; (3) another new set of regulations setting forth the Department’s compliance monitoring standards, which will constitute Article 2 of the new Subchapter 4.5; and (4) conforming technical revisions to the headings and text of subsequent regulations.

Some of the major elements of the proposed revisions are:

- Fees will be set at $\frac{1}{4}$ of 1% of bond proceeds for bond-funded projects and $\frac{1}{4}$ of 1% of total project costs (less land acquisition costs) for design-build and other statutorily authorized projects.
- Fee waivers, which will apply automatically, for awarding bodies with previously approved LCPs that they continue to use either for all of their own public works projects or for all projects that otherwise would be subject to a fee under SBX2-9.
- Project notices, which DIR intends to combine with the notices required under Labor Code section 1773.3 (*i.e.*, the DAS-13) and provide for online submission.
- Submission of certified payroll records to the DIR's Compliance Monitoring Unit ("CMU") for review. DIR also intends to provide for electronic submission of these records to the CMU at no cost to contractors.
- Review of all certified payroll records, and random audits and site visits to corroborate reported payroll information and confirm compliance with prevailing wage requirements.
- Requirements for accepting and investigating complaints of suspected violations.
- Notice requirements and an expedited hearing for withholdings of contract payment based on delinquent or inadequate payroll reports.
- Conforming changes in the LCP regulations as well as some unrelated changes, including a new threshold standard for revocation based on failure to enforce and a return to fiscal year reporting by all programs.

Once the new regulations are in place, districts and their project teams contemplating state bond funded projects will need to be knowledgeable about and plan for these statutory and regulatory changes in the area of labor compliance. The changes will require revisions to contract documents to reflect the new regulatory scheme, as applicable. If you have questions concerning this topic, please feel free to contact the Business Practice Group.

– Christopher P. Burger

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