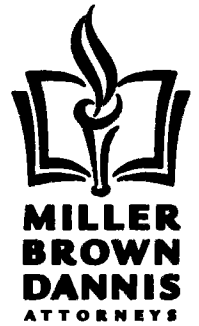


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January 5, 2010

E-MAIL AND MAIL

DIR, Office of the Director -- Legal Unit
455 Golden Gate Avenue, Suite 9516
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Email: LCPCComments@dir.ca.gov

Re: Comments regarding Proposed Rulemaking re Title 8 of the California Code of Regulations, Department of Industrial Relations

Dear DIR Legal Unit:

Our firm represents California k-12 school districts and community college districts (districts) with regard to public construction and other issues. We have reviewed the proposed changes to Title 8 of the California Code of Regulations (the Regulations) to conform to Senate Bill 9 from the second extraordinary session for 2009 (SBx2 9), and have the following comments concerning those regulations.

1. The Regulations do not address appropriate notice and timing of fee payment for many district projects.
2. The Regulations do not provide for the refund or use of excess funds if the funds collected exceed the cost for Department of Industrial Relations (DIR) labor compliance monitoring and enforcement.
3. The Regulations include soft costs in the total construction cost upon which DIR fees are based for non-bond funded projects subject to DIR oversight.

Legal Analysis

1. The Regulations do not address appropriate notice and timing of fee payment for many district projects.
 - a. The Regulations lack provision for timely notice and fee payment when districts plan to seek state-bond reimbursement.

Many districts fund projects with local bond funds or other local facilities funds and seek state-bond reimbursement after conclusion of the project. The proposed Regulations provide for payment of the fee at the time the awarding body provides notice to DIR about the project. (Regulations, § 16452.) That notice is required at the later of the time of fund award or fund release. (Regulations, § 16451(a)(1).)

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Under this structure, a district would not notify DIR until after a project is completed if the district requests state-bond reimbursement. How would DIR know to monitor and enforce labor compliance in such a situation? Without DIR monitoring and enforcement, the SAB could reject a request for state-bond funding, creating a catch 22 for districts that use this mechanism.

An alternative notice structure is needed for districts seeking state-bond fund reimbursement with the fees to be deferred until state-bond funds are allocated to the project.

- b. The Regulations do not account for community college district multiple fund releases.

For community college district projects subject to multiple state-bond fund releases, the notice and fee payment should occur at the time of fund release for the construction phase, not at the time of the first fund release for the project. Notice and fee payment at the time of the first fund release during project planning is not consistent with the timing of DIR's monitoring and enforcement.

2. The Regulations do not provide for the refund or use of excess funds if the fees collected exceed the cost for Department of Industrial Relations (DIR) labor compliance monitoring and enforcement.

The Regulations do not address the use of excess funds if the cost of DIR monitoring and enforcement is less than the amount of fees collected. The proposed Regulations provide for fee calculation based on either state-bond proceeds or total project costs and limit the use of fees for monitoring and enforcement of prevailing wages on projects subject to the fee. (Regulations, § 16452.) The limitation on the use of fees to operation of the new Compliance and Monitoring Unit (CMU) that will handle labor compliance monitoring and enforcement is good, however the Regulations should allow for a fee reduction if the amount collected exceeds the cost of CMU operation.

3. The Regulations include soft costs in the total project costs upon which DIR fees are based for non-bond funded projects subject to DIR oversight.

For projects that are subject to DIR monitoring and enforcement for reasons other than state-bond funding, the fee payable to DIR is based upon total project costs. (Regulations, § 16452.) Since architect, construction management, and other consultant costs are not subject to prevailing wage, these soft costs should not be included in the base upon which this fee is calculated. In fact, determination of the fee based upon the contract price for all public works construction contracts that are part of a project is easier to determine than the proposed definition of total project costs.

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Conclusion

We believe that the foregoing proposed changes would improve the Regulations as proposed. Please contact the undersigned if you have questions or if we can assist further with this process.

Very truly yours,

MILLER BROWN & DANNIS

A handwritten signature in black ink, appearing to read "Marilyn J. Cleveland". The signature is written in a cursive style with a long, sweeping tail on the final letter.

Marilyn J. Cleveland
MJC/kgt