



Adopting and Implementing a Labor Compliance Program

By Marilyn J. Cleveland and Philip J. Henderson

As the celebrations were winding down after the passage of Proposition 47 last year, school districts in California woke up to the realization that the funds from Prop. 47 came with some strings attached. Having some strings is not new for state funding, but this time there was something really new—the need to have a labor compliance program.

All districts that use any funds from Prop. 47 must adopt and implement a labor compliance program (LCP) for state bond funded projects. To implement an LCP, a district can either contract with a third party provider that has an approved LCP or obtain the Department of Industrial Relations (DIR) approval of an LCP to be administered in-house or by a third party. Either way, a district sends the DIR an application with a copy of the LCP the district has adopted. An application form is available on the DIR website located at www.dir.ca.gov.

Under an LCP, a district takes an active role in monitoring the payment of prevailing wages to all workers on projects that use any Prop. 47 funds. The basic features of most LCPs include the following:

- **Designate an LCP Officer.** Districts must designate an LCP officer before the DIR will approve an LCP.
- **Hold a Pre-Job Conference.** The LCP officer must present specific information to the contractors before a project begins.
- **Receive, Review, and Audit Certified Payroll Records.** All contractors, including all subcontractors, must provide to the LCP officer, certified weekly payroll records for each worker that works on a project. The LCP officer must review and audit those records to confirm the prevailing wage, including all required benefits.
- **Interview Workers.** The LCP officer or a site monitor must interview some of each contractor's workers to confirm their rate of pay and their classification.
- **Withhold Contract Payments.** If a district's LCP officer finds that a contractor has violated the prevailing wage laws, the LCP officer must withhold the difference between what was paid and what should have been paid, in addition to daily penalties of \$25 or \$50 per worker per day, depending on the type of violation. The LCP officer also requests that the DIR determine an amount of forfeiture based on the LCP officer's findings.
- **Notify the Contractor of their Appeal Rights.** All contractors have an opportunity to appeal any forfeiture determination. There are specific guidelines and notice requirements that both the district's LCP officer and each contractor must follow.



- **Prepare an Annual Report.** A district's LCP officer must prepare and submit an annual report to the DIR.

AB 1506 specifically mandates that by July 1, 2003, the State Allocation Board (SAB) must increase the per pupil grant to pay for the "state's share" of initiating and implementing an LCP. At the same time this article was written, the SAB had not yet determined what the increase will be or how to determine the increase. Some have estimated that an LCP could cost as low as one half percent of hard construction costs for larger projects, and up to three percent for smaller projects. It is unlikely that the per pupil increase will cover most districts' costs for implementing an LCP.

CASBO Northern Section hosted a very successful LCP workshop in May this year. The panel consisted of DIR Interim Director Charles Cake, Division of Labor Standard Enforcement (DLSE) Attorney Thomas Fredericks, Turner Construction Company Vice President Doug Williams, Antioch Unified School District Assistant Superintendent Dane Ruddell, and Miller Brown & Dannis Attorney Marilyn Cleveland. The panel provided insight into the requirements of an LCP and how to implement and LCP in a district.

The panel reviewed in detail much of the information in this article. In addition, the speakers provided the following important information:

- Prevailing wages must be paid not only to employees of contractors, but also to partners, owners/operators, and anyone working on a public projects that "uses their hands" on the project.
- DIR will be providing training throughout the summer on what the DIR expects from districts implementing LCPs. Check the DIR website for training schedules.
- The panel could not forecast the staffing needs for LCPs but agreed that the number and size of projects would be the most important factors. Mr. Ruddell estimated that one half-time person for each project might be a good starting point. Mr. Case informed the audience that the County of Sacramento, with \$200 million in projects, had one full-time labor compliance officer, one full-time secretary, and two full-time site monitors.
- While emphasizing that the number and frequency of worker interviews would fluctuate depending on the project, Mr. Ruddell stated that Antioch's program had a goal to talk with some of each contractor's and subcontractor's employees at least twice and that one to two visits a month were expected to be sufficient unless problems or discrepancies necessitated more site visits.
- Some of the "red flags" that could indicate a problem would be a discrepancy between the number of workers indicated on daily reports and certified payroll records,



unlikely classification (e.g., an electrical contractor that lists only laborers on its certified payroll records), partial hours in the middle of a project, and bounced checks.

- There are two recent DIR “precedential determinations” regarding off-site work that have been appealed and are therefore now not enforceable. The DIR has held public hearings regarding these decisions, and a final determination is expected soon.
- Concerns that a district may be increasing its risk if it hires a third party to administrator all or part of the district’s LCP responsibilities if the DIR has not pre-approved that third party.
- Even if a district hires a third party that has a pre-approved plan, the district must apply to DIR to utilize that pre-approved plan.
- Districts should hire an LCP provider with the same diligence and care that districts currently use to hire construction consultants.
- The use of software to review certified payroll records and the expected benefit of automating this part of an LCP’s responsibilities.

AB 1506 mandates that districts actively police their contractors with respect to the payment of prevailing wages. To do this, a district’s first step is to get a basic understanding of what is required and then determine the best way to go about fulfilling the requirement. A district may be able to perform this work in-house. If not, there are now dozens, if not hundreds, of LCP providers who are eager to assist districts with their LCPs. Some are affiliated with trade unions, some with construction management companies, and some are new entrepreneurs. Regardless of origin, everyone is treading on new ground.