Legal Update for Public Works Officers
League of California Cities

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- The information provided is of a general nature and is not intended to be legal advice.

- Legal counsel should be contacted to review specific questions and to provide appropriate legal advice.

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AB 2249- Increasing Competitive Bidding Threshold

Uniform Public Construction Cost Accounting Act Increases Bidding Thresholds as follows:

- Contacts of $60,000 or less may be performed by employees of public agency;
- Contracts of $200,000 or less can be awarded via informal procedures;

Contracts over $200,000 must be let via formal bidding procedures; and

If all bids are over $200,000, agency may award contract for $212,500 or less if it determines cost estimate of public agency was reasonable,
AB 2762 Increases Small Business Goal

- Increases small business goal available to all public agencies to a maximum of 7% with a maximum financial value of $150,000
- Obligation is to meet goal or demonstrate good faith effort

AB 2762 Increases Small Business Goal

- Expanded goal applies to any public entity in the following counties:
  - Alameda,
  - Contra Costa
  - Lake
  - Los Angeles
  - Marin
  - Napa
  - San Francisco
  - San Mateo
  - Santa Clara
  - Solano
  - Sonoma
AB 2762 Increases Small Business Goal

- If more than one preference adopted in single bid (Small Business, Disabled Veterans Business or Social Enterprise)
  - An agency in the counties set forth previously can establish a goal of 15% with a maximum financial value of $200,000
  - Obligation is to meet goal or demonstrate good faith effort

SB 721 – Inspection of Elevated Entry Structures

- Requires inspection of balconies and other elevated structures for:
  - Buildings of 3 or more multi-family units
  - Report to be provided to owner within 45 days of completion of inspection
  - Report to address load bearing capacity and water proofing integrity
SB 721 – Inspection of Elevated Entry Structures

- Deadlines for repairs
- Fines for failure to comply
- Local Agency can recover enforcement costs.
- Inspections must be completed by January 1, 2025
- Subsequent inspections every 6 years

Labor Code Section 1720.9 Concrete Deliveries

- Concrete Deliveries for contracts awarded after July 1, 2016
- Final Court of Appeals ruling September 2018.
- Special Prevailing Wage Rate by county
- Based on location of concrete plant not location of project
Labor Code Section 1720.9
Concrete Deliveries

- Prevailing wages start at plant and ends when truck is cleaned
- Requires written contract
- Concrete Companies must submit:
  - Certified payrolls
  - Proof of any fringe benefits claimed to meet prevailing wage
  - Written time records

SB 96 Prevailing Wage Requirements

- PWC-100s to be filed for projects over $15,000 for Maintenance and over $25,000 for Construction
  - Must be filed within 30 days of award but not later than first day work is performed on the project
  - Fines of $100 a day for late filing
SB 96 Prevailing Wage Requirements

- Emergency Work as defined by Public Contract Code allows PWC-100 to be filed:
  - 30 days after work begins on the project but not later than completion of project, whichever is earlier.

SB 96 Prevailing Wage Requirements

- All entities performing covered prevailing wage work on the project which is greater than $15,000 for maintenance or over $25,000 for construction must be registered as a “public works contactor” prior to bid.
SB Prevailing Wage Requirements

- This includes:
  - Contractors
  - Subcontractors
  - Owner-operators
  - Surveyors
  - Inspectors
  - Material Testing
  - Employee Staffing Agencies
  - Trucking

SB Prevailing Wage Requirements

- Fines imposed by the California Department of Industrial Relations
  - $100 per day to the offending contractor
  - $100 per day to the prime contractor
  - $100 a day to the awarding agency
Prevailing Wages
Mandated Contract Clauses

The call for bids and contract documents (including purchase orders) must include the following:

- No contractor or subcontractor may be listed on a bid proposal for a public works project unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5 [with limited exceptions from this requirement for bid purposes only under Labor Code section 1771.1(a)].

- No contractor or subcontractor may be awarded a contract for public work on a public works project unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5.

- This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

Prevailing Wages
Mandated Contact Clauses

The awarding body shall cause to be inserted in every public works contract a clause providing that:

- Every contractor will be required to secure the payment of workers compensation to his or her employees. Labor Code Section 1860.

- The contractor shall post the applicable prevailing wage rate on the project site. Labor Code Section 1771.4

- The project is subject to prevailing wages. The applicable wage rates are available at [www.dir.ca.gov](http://www.dir.ca.gov) and the agency also has access to the applicable prevailing wage rate at City’s Department of Public Works Department.
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  - Smith Currie & Hancock
    - Daniel McLennon
  - Gordon Rees Scully Mansukhani, LLP,
    - Brenda Radmacher

Credentials - Deborah Wilder

- 35+ years as a practicing attorney
- Author of *What Every Contractor Should Know About Prevailing Wages* © Jan 2010; 2nd Edition 2015
- Author of *AGC of America’s Davis Bacon Compliance Manual 5th Edition* © 2018
- Nationally recognized speaker on the subject of state and federal prevailing wage compliance:
  - Workshops, Webinars, and presentations before World of Concrete, APWA-American Public Works Association, CLE Workshops for Continuing Legal Education, Webinars with AGC, ABC, Builders Exchanges and more.
Questions?

Thank You
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