
Bowie, Arneson,
Wiles & Giannone

Bidding Procedures

C.A.S.H. Workshop

March 25, 2003

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Legal Update on Current Bid Requirements

- **Assembly Bill 1506 (AB 1506)** -- Labor Compliance Programs (“LCPs”)
- Section 1771.5(b)(1) requires that school districts include new information in bid documents:

“ . . . a labor compliance program shall include. . .the following requirements:

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Legal Update on Current Bid Requirements

(1) All bid invitations and public works contracts shall contain appropriate language concerning reqt's of LCP”;

(2) A pre-job conference shall be conducted . . . to discuss . . . labor law requirements applicable to the contract;

(3) . . . maintain and furnish . . . certified copies of weekly payroll containing a statement of compliance signed under penalty of perjury; (Note: may not want to receive weekly)

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(4) . . . review and auditing of payroll records to verify compliance;

(5) . . . withhold contract payments when payroll records are delinquent or inadequate; and

(6) . . . withhold contract payments equal to the amount of underpayment and applicable penalties after establishment that underpayment has occurred.

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Legal Update on Current Bid Requirements

California Code of Regulations (“CCRs”) provide some guidance:

8 CCR Section 16429(a) – Notice of initial or final approval of an LCP shall be in the call for bids and in the contract/purchase order & posted at the job site.

8 CCR Section 16429(b) – Notice of an approved LCP shall contain, at a minimum:

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- the effective date of the DIR's approval,
- a statement that the limited exemption from prevailing wages (Labor Code Section 1771.5(a)) applies to the contract,
- a telephone number to call for inquiries, questions or assistance re: LCP, and
- the name of the agent/office administering the LCP (if different than the school district).

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- 8 CCR Section 16430(a) – mirrors reqt's. for inserting new language into the call for bids and contracts subject to the District's LCP. Also requires "Pre-Job Conference Checklist."
- Depending on the LCP submitted to the DIR, usually only State-Funded projects are monitored by the LCP.

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Legal Update on Current Bid Requirements

- Confusion on \$ Exemptions – Labor Code Section 1771.5(a) & 8 CCR Section 16433
 - Limited Exemption of \$25,000 (construction work) or \$15,000 (alteration, demolition, repair or maintenance work) not applicable if the school district does not initiate and enforce an LCP for **all** public works projects.
 - Must specify in call for bids if project applies to the above, if applicable.

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Legal Update on Current Bid Requirements

- **Pre-bid Conferences** – still Optional
- Labor Code Section 1771.5(b)(2) requires a “pre-job conference” – not the same as a pre-bid conference.
- Time consuming to do both

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Legal Update on Current Bid Requirements

- **Design-Build Contracts** – remember to update your bond reqt's to cover the contract amount for non-design services, plus errors & omissions insurance to cover all design & architectural services.
 - Must use bond forms developed by the Dept. of General Services (“DSG”)(Educ. Code Section 17250.30)
 - LCP applies to design-build contracts

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Legal Update on Current Bid Requirements

- **Public Contract Code Section 3300** – specification of the classification of Contractor’s license *at time contract is awarded* must be included in Notice Inviting Bids.

- **Public Contract Code Section 3400** –
 - (1) Specifications must provide a period of time prior to or after, or prior to and after, the award of the contract for submission of data supporting request for substitution of “an equal” item.
 - (2) If sole source, Notice Inviting Bids or Request for Proposal must describe District’s finding that sole source justified

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Public Contract Code Section 4104 – District may allow information regarding a subcontractor listed in the bid documents to be submitted up to 24 hrs. after bid opening

- Does not apply to (1) name, or (2) location of the business of the subcontractor.
- District may implement this at its option.

(Contractor must identify all subcontractors who will perform work which exceeds ½ of 1% of total bid.)

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Legal Update on Current Bid Requirements

■ **Public Contract Code Section 9201 –**

- (1) District must timely notify the contractor of any third-party claim relating to the contract.
- (2) District entitled to its reasonable costs incurred in providing this notice.

Civil Code Section 3247 – District must specify in its Notice Inviting Bids that payment bond is required (if project over \$25,000) & must approve the bond.

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Legal Update on Current Bid Requirements

■ **Code of Civil Procedure Section 995.660**

- “Approval” of payment bond = insurer must provide within 10 days:

- (1) appointment/power of atty, bylaws authorizing execution of bond;
- (2) certified copy of certificate of authority;
- (3) certificate from clerk of county where project located; and
- (4) copies of most recent annual & quarterly statements.

Civil Code Section 3248 – make sure bond has specified language.

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Legal Update on Current Bid Requirements

- Case: ***Lewis Jorge Construction Mgmt. v. Pomona USD*** (July 19, 2002, rev. granted)
- The parties to the contract agree that specific performance of this project is sought by the District. “The legal doctrine that a contractor may recover for a substantial performance of a building contract (the ‘Doctrine of Substantial Performance’) shall have no application to this contract.”