



Association of California Construction Managers

December 30, 2009

Department of Industrial Relations
Office of the Director, Legal Unit
455 Golden Gate Avenue, Suite 9516
San Francisco CA 94102

Public Comment on Proposed Rulemaking

To Whom It May Concern:

The Association of California Construction Managers (ACCM) thanks the Department of Industrial Relations (DIR) for the opportunity to submit the following comments and recommendations regarding regulations to implement Senate Bill 9 of the Second Extraordinary Session of the 2008-10 Legislative Session.

The comments and recommendations are presented in numeric order of the proposed regulation section:

Section 16452. Fees for Compliance Monitoring by Department of Industrial Relations

- (a) The fee for services under this subchapter shall be as follows:
- (1) For any project subject to the requirements of this subchapter solely by reason of the receipt of state-issued bond funds, the fee shall be one-fourth of one percent of the funds released by the funding agency for the *total* project *costs*;
 - (2) For any other project, the fee shall be equal to the greater of the following:
 - (A) one-fourth of one percent of the proceeds of any state-issued bond funds that have been provided for the project, or
 - (B) one-fourth of one percent of the total project costs, *or*
 - (C) one-eighth of one percent of the proceeds of any state issued bond funds that have been provided for a financial hardship project in the School Facility Program (SFP).

Explanation: Specifically, the calculation of the one-fourth of one percent on state bond proceeds disadvantage Financial Hardship school districts that receive up to 100% project funding from the state. While it may seem reasonable to charge more for projects that receive most if not all project funding from the State, Financial Hardship districts receive extraordinary assistance from the State precisely because they do not have the local resources to fund the project. In that SBx 2 9 (Padilla) gives DIR the authority to assess a fee “in any amount not to exceed” one fourth of one percent of the bond proceeds, DIR may consider assessing a fee of *one-eighth of one percent* on the bond proceeds for Financial Hardship projects, which would make the assessment (1) more equitable, and (2) less burdensome to districts fully dependent on State funding for construction.

Section 16461. Review of Payroll Records and other Monitoring and Investigative Activities of Compliance and Monitoring Unit.

- (b): Contractors and subcontractors shall keep accurate payroll records in accordance with Labor Code Section 1776, and such records shall be furnished to the Compliance and Monitoring Unit at times designated by the Awarding Body in the contract, which shall be at least monthly, or within 10 days of any separate request by the Compliance and Monitoring Unit. Payroll records shall be furnished in a format prescribed by section 16401 of Title 8 of the California Code of Regulations, with use of the current version of DIR’s “Public Works

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Payroll Reporting Form” (A-1-131) and “Statement of Employer Payments” (DLSE Form PW26) constituting presumptive compliance with this requirement, provided the forms are filled out accurately and completely. In lieu of paper forms, the Compliance and Monitoring Unit may provide for and require the electronic submission of certified payroll reports. *If electronic submission is provided for or required, the submission should be simultaneously provided at a minimum to the general contractor or construction manager in the situation of a multiple-prime contract and access shall be provided to any response party.*

Explanation: The current process ensures that the general contractor and construction managers are informed if there are problems with the certified payroll. The proposed added language is intended to ensure that they receive the same information at the same time if the information is electronically transmitted to DIR.

Section 16463. Withholding of Contract Payments When Payroll Records are Delinquent or Inadequate.

(e): The Labor Commissioner may require the Awarding Body to withhold contract payments when payroll records are delinquent or inadequate. The amount withheld shall be limited to those payments due or estimated to be due to the contractor or subcontractor whose payroll records are delinquent or inadequate, plus any additional amount that the Labor Commissioner has reasonable cause to believe may be needed to cover a back wage and penalty assessment against the contractor or subcontractor whose payroll records are delinquent or inadequate; provided that a contractor shall be required in turn to *cease reduce to the undisputed amount* all payments to a subcontractor whose payroll records are delinquent or inadequate until the Labor Commissioner provides notice that the subcontractor has cured the delinquency or deficiency. *Payments will not cease if that act could damage the project owner or other workers.*

Explanation: The additional language is intended to allow a targeted response so a problem with one subcontractor does not result in harm to the employees of an unrelated subcontractor or to the projects owner.

Sincerely,

David Walrath