

2009 ACBO Spring Conference

Labor Compliance and
SB X2-9

Panelists

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Labor Compliance and SB X2-9

■ What is a Labor Compliance Program?

- Labor Code section 1771.5 authorizes the establishment of Labor Compliance Programs (“LCPs”) to enforce prevailing wage requirements on public works construction projects.
- LCPs enforce prevailing wage laws on behalf of the public agencies that award public works contracts (known as “awarding bodies”) and serve as an alternative to the traditional enforcement role of the Division of Labor Standards Enforcement (DLSE).
- LCPs are required, among other things, to inform contractors about their prevailing wage obligations, to monitor compliance by obtaining and reviewing certified payroll reports, to investigate complaints and other suspected violations, and to take appropriate enforcement action when violations are found.
- LCPs must be approved, may have their approval revoked, and must follow specific reporting and performance standards in accordance with regulations adopted by the Director of the Department of Industrial Relations at Title 8, California Code of Regulations, sections 16421 – 16439.

Labor Compliance and SB X2-9

■ Current Labor Compliance Program Status

- On February 20, 2009, Governor Schwarzenegger signed into law Senate Bill 9 (SBX2-9), which was one of the measures adopted in the legislature's second extraordinary session to address California's budget crisis.
- SBX2-9 amended several laws that currently require cities, counties, school districts, transit districts, and other government entities to operate a labor compliance program ("LCP") or to contract with a third party LCP to enforce prevailing wage requirements on specified bond-funded or design-build public works projects.*
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- Under the new law, these entities will pay a fee to the Department of Industrial Relations for enhanced labor compliance monitoring and enforcement in lieu of maintaining an LCP.
- Continued..

Labor Compliance and SB X2-9

- Current Labor Compliance Program Status...continued
 - Future of Third Party LCPs: Once SBX2-9 becomes effective, most statutes that currently require awarding bodies to use LCPs for specified construction projects will instead require those agencies to pay DIR a fee for labor compliance monitoring and enforcement.
 - This change will also do away with the option of contracting out LCP responsibilities to approved third party programs. Moreover, awarding bodies that want to continue using an LCP will not be eligible for a fee waiver from DIR if they contract out their LCP responsibilities to a third party program.

Labor Compliance

- What prompted this legislation?
 - The LAO released a report
 - *Implementing the 2006 bond Package*
 - The LAO report suggested deficiencies existed in wage recovery thru LCP's and penalty assessment
 - The LAO report identified key legislative options for projects funded by the 2006 bond acts:
 - Stronger oversight of LCP's and a sunset date
 - Increase DIR enforcement staff instead of new LCP requirements.
 - The outcome was SB X2-9

Labor Compliance and SB X2-9

- Status of SB X2-9 implementation:
 - DIR to start enforcement when new Regulations are adopted
 - (projecting January, 2010)
 - Until that time, current law governs LCP administration
 - DIR to charge $\frac{1}{4}$ percent on bond funds (need definition of bond funds?)
 - Existing approved LCP's (Public Entities only) may eliminate the $\frac{1}{4}\%$ charge, but are required to implement the LCP without the assistance of any 3rd party LCP.
 - Part of the implementing regulations will include an enforcement process

Labor Compliance and SB X2-9

- How can districts provide input into the development of implementing regulations?
 - The DIR will be scheduling public meetings during the summer of 2009.

Labor Compliance and SB2X

- Does SB2X still affect me if I'm currently administering a locally based Labor Compliance Program?
 - Potentially not, but you can't contract with a 3rd party LCP
 - It's not likely CCD's will be able to gain approval of their own LCP, if they don't already have one approved.

How has FHDA been managing Labor Compliance?

Construction Costs: \$14M

Labor Compliance

Project 20 mil x .25% = 50,000

Construction 14 mil x .34% = 47,600

✓ **PB Americas, Inc**

- **Fee: .34% of Construction**

✓ **Scope of Services**

- **Pre-construction meeting**
- **Forms, reporting, records and processes**
- **Bi-weekly certified payrolls review**
- **Bi-monthly interviews with jobsite personnel to spot check and verify correct prevailing wage payment and job classification**
- **Report and track penalties assessed**
- **Focal point for communications**



**De Anza College
Visual and Performing Arts Center**

How has FHDA been managing Labor Compliance?

Construction Costs: \$65M

Labor Compliance

Project 93 mil x .25% = 232,500

✓ **PB Americas, Inc**

Construction 65 mil x .22% = 143,000



Foothill College

Campus Center / Lower Campus Complex

- **Fee: .22% of Construction**

✓ **Scope of Services**

- **Pre-construction meeting**
- **Forms, reporting, records and processes**
- **Bi-weekly certified payrolls review**
- **Bi-monthly interviews with jobsite personnel to spot check and verify correct prevailing wage payment and job classification**
- **Report and track penalties assessed**
- **Focal point for communications**

How has FHDA been managing Labor Compliance?



**Foothill College
Field House / Service Buildings**

Construction Costs: \$3.6M

Labor Compliance

Project 5 mil x .25% = 12,500

Construction 3.6 mil x .6% = 21,600

✓ **PB Americas, Inc**

- **Fee: .6% of Construction**

✓ **Scope of Services**

- **Pre-construction meeting**
- **Forms, reporting, records and processes**
- **Bi-weekly certified payrolls review**
- **Bi-monthly interviews with jobsite personnel to spot check and verify correct prevailing wage payment and job classification**
- **Report and track penalties assessed**
- **Focal point for communications**

Labor Compliance and SB X2-9

- *Relevant Links:*
- *The Full LAO Report:*
 - http://www.lao.ca.gov/2007/2006_bonds/2006_bonds_012207.aspx#intro
- *The Legislation:*
 - http://www.leginfo.ca.gov/pub/09-10/bill/sen/sb_0001-0050/sbx2_9_bill_20090220_chaptered.pdf