

**REVISED  
ATTACHMENT J**

**QUESTIONS REGARDING THE DEPARTMENT OF INDUSTRIAL RELATIONS  
REGARDING THE IMPLEMENTATION OF AB 436**

Department of Industrial Relations (DIR) Interpretation

- What constitutes the “initial prime contract”? (DIR’s proposed regulation Section 16451)  
**The initial public works contract (LC Section 1720) awarded for the project would be considered the initial prime contract. Additional prime contracts for the same project, such as within the same DSA approved plans, would be considered part of the same project.**
- How is “every public works project” being defined? (DIR Section 16455)
  - Will a district be able to choose which public works projects it submits to DIR or which it does not submit, or will failing to submit to DIR on one project (that will not be state-funded, for example) jeopardize the funding of other projects (that *will* be state-funded)?  
**Districts may choose which projects the CMU will provide monitoring services for, but only projects that have the CMU monitoring will be eligible for State bond funds. However, if a district receives an exemption from the CMU monitoring due to an approved in-house program, then the in-house program must cover every public works project, as defined by LC Section 1720. (Note: the PLA exemption only applies on a project-by-project basis, but it overrides any other requirement to use the CMU or an LCP.**
  - If the DIR fee is waived for one project because a district qualifies for an exemption (because the district has an approved in-house LCP, for example), must the district qualify for that same exemption for all its public works projects? Or can some projects qualify for the fee waiver and others not qualify?  
**To qualify for the in house LCP exemption or exception, the district must use the LCP for every project that otherwise would require use of the CMU. The PLA exemption or exception, however, applies on a project-by-project basis, and this exemption takes precedence over a conflicting LCP obligation. (In other words, if the District has an LCP that it is required to use for all projects, either to qualify for higher prevailing wage exemptions or a CMU fee waiver, it nevertheless need not use that LCP on a project with a PLA.**
- The DIR fee shall be waived if a district has a previously initiated LCP. Must the LCP be initiated previous to the statute, previous to the public works contract being signed, or previous to some other event?  
**DIR interprets the law requiring the LCP to be initiated prior to the statute becoming effective. DIR will accept and process any application submitted prior to the effective date of the statute.**
- **Can a DIR approved in-house program be administered by a third party vendor? No, any approved programs must be administered directly by the school district.**

DIR Process

- DIR’s Form DIR-PWC 100 reads like DIR will continue to approve LCPs and PLAs after 1/1/12. Is that true? **See response on previously-initiated LCPs above. The PLA exemption applies on a project-by-project basis, and for DIR it will be a matter of confirming that the PLA meets the statutory requirement (i.e. “a collective bargaining agreement that binds all of the contractors**

**performing work on the project and that includes a mechanism for resolving disputes about the payment of wages.”**

- When DIR bills a district, how is “overhead” being defined?  
**DIR is in the process of having the AG approve a list of costs that will be considered “overhead”.**
- How will DIR know the maximum fee it can charge a district when the district is receiving state funding for the project? Must OPSC provide DIR any information or will DIR already have the necessary information?  
**DIR hopes to obtain this information through the PWC 100 and also through separate sources, including OPSC. Direct notice of OPSC would be the most reliable and accurate way to obtain this information.**
- How will DIR calculate the costs for the electronic payroll system to be charged to districts when a project is submitted to DIR to monitor?  
**The cost will be equal to \$35,000 divided by the total number of projects submitted for the service (for all State bond funded programs and other projects subject to CMU requirements, not just SFP projects). The final amount and manner in which it will be charged is still being determined.**