REPORT OF THE EXECUTIVE OFFICER
State Allocation Board Meeting, June 30, 2015

SCHOOL DISTRICT DATA	
School District: ..... NAPA VALLEY UNIFIED	County: ..... NAPA
Application Number:58/66266-00-001 & 58/66266-00-002	School Name: . Vintage High & Bel Aire Park Elementary
Total District Enrollment:.....18,610	Project Grade Level:.....9-12 and K-6
Financial Hardship:.....NO	

PURPOSE OF REPORT

To present the Napa Valley Unified School District's (District) request to allow a release of funds for apportioned seismic projects at Vintage High (58/66266-00-001) and Bel Aire Park Elementary (58/66266-00-002).

DESCRIPTION

The District has two Facility Hardship applications for seismic mitigation work totaling approximately $1.1 million that are unable to submit a valid fund release request because they are not in compliance with EC Section 17070.70(b) which requires districts to comply with all laws pertaining to school construction projects. In these cases, the projects are not in compliance with Prevailing Wage Monitoring (PWM) requirements set forth in Labor Code. The purpose of this item is to inform the Board of these issues and provide background on how similar issues have previously been resolved. Staff is seeking Board direction for the next steps for these projects.

AUTHORITY

See Attachment A.

BACKGROUND

Pursuant to Education Code (EC) Section 17070.70(b), the applicant school district shall comply with all laws pertaining to the construction, reconstruction, or alteration of, or addition to, school buildings. Therefore, school districts are subject to the requirements of Labor Code. A brief history of some of the changes in Labor Code affecting School Facility Program (SFP) funded projects is included below.

Since the approval of Assembly Bill 1506, Chapter 868, Statutes of 2002 (Wesson), school districts receiving Kindergarten-University Public Education Facilities Bond Acts of 2002 and 2004 (Propositions 47 and 55 respectively) funding have been required to implement a Labor Compliance Program (LCP). In 2010, Senate Bill (SB) X2 9, Chapter 7, Statutes of 2010 (Padilla) passed requiring Department of Industrial Relations (DIR) monitoring of PWM requirements for projects receiving public bond funds unless previously authorized to initiate and operate an LCP. For some projects, Staff has been unable to release funds due to non-compliance with these requirements.

On September 30, 2011, Assembly Bill (AB) 436, Chapter 378, Statutes of 2011 (Solorio) was signed into law, amending many of the provisions in SBX2 9. Any public works projects for which the construction contract was awarded on or after January 1, 2012 was subject to its provisions, including the requirement that the DIR "enforce compliance with applicable prevailing wage requirements" for these projects. Agencies, including school districts, paid a monitoring fee to DIR for projects paid for in whole or part out of public funds. AB 436 also included an exception for projects for which the school district either had a DIR-approved in house LCP or a qualifying project labor agreement.

On June 27, 2012, SB 1038, Chapter 46, Statutes of 2012 was signed into law. The bill amended Labor Code Section 1773.3 to include a five day DIR notification requirement for all public works projects paid for in whole or part out of public funds.

(Continued on Page Two)

BACKGROUND (cont.)

On June 20, 2014, SB 854, Chapter 28, Statutes of 2014 was signed into law, which further amended public works provisions of the Labor Code. SB 854 created a new public works contractor registration system that funds all of DIR's costs and obligations associated with the implementation and enforcement of Labor Code set forth by SB 854 and the requirement for districts to pay DIR for monitoring on a bond-funded public works project.

SB 854 still requires DIR to monitor and enforce prevailing wage compliance. However, any SFP project with a construction contract awarded on or after June 20, 2014 will not receive the additional prevailing wage monitoring grant, as compliance monitoring is paid for by contractor registration fees. Public works projects are subject to DIR compliance monitoring pursuant to Labor Code Section 1771.4. SB 854 repealed and replaced Labor Code Section 1773.3 as set forth by AB 436; however, the five day DIR notification requirement remains.

Prior Board Actions
While there has not yet been any Board actions related to non-compliance with the Labor Code requirement for compliance monitoring by DIR, the Board has previously addressed issues concerning non-compliance with LCP requirements set forth in Labor Code.

The Board has previously heard one action item and four appeals regarding LCP issues that resulted in bond source switches and/or apportionment reductions. At the May and July 2011 meetings, the Board approved bond source switches for two school districts that had not implemented a DIR-approved LCP. At the October 2011 meeting, the Board approved a bond source switch for a third project based on the amount of authority available, resulting in a reduction and at that time determined that the switching of fund source was no longer an option for districts once an unfunded approval has been received. The next two appeals received reductions of 20 percent and 14 percent. All five districts that had LCP issues are listed in the table below with the associated project reductions.

District	Apportionment	Reduction	Reduction %
Belmont-Redwood Shores ESD	$ 8,723,072	$ 26,868*	0.3%
Esparto USD	$ 1,246,311	$ 16,616*	1.3%
North Monterey USD	$ 1,475,037	$ 462,671	31.4%
Sanger USD	$ 3,465,294	$ 735,278	20.0%
Cinnabar ESD	$ 1,456,277	$ 203,154	14.0%

*Reduction was only for the LCP grant for which the Districts no longer qualified.

The reduction for each appeal was based on factors specific to each application.

1. Belmont/Redwood Shores ESD – The Board approved a bond source switch to Proposition 1D for the full amount of the apportionment, less the LCP grant.
2. Esparto ESD – The Board approved a bond source switch to Proposition 1D for the full amount of the apportionment, less the LCP grant.
3. North Monterey USD – The Board approved a bond source switch to Proposition 1D Authority for the amount of Proposition 1D Bond Authority that was available at the time.
4. Sanger USD – The Board approved a 20 percent reduction to each of the four applications that were part of the appeal.
5. Cinnabar ESD - The apportionment was reduced by removing phase one of the project, which was not in compliance with Labor Code, applying a non-compliance penalty, and the removal of the PWM grant.

(Continued on Page Three)

BACKGROUND (cont.)

In October 2012, the Board approved amendments to the SFP Regulations that were developed with input from DIR to provide school districts with a method of obtaining approval for the LCP component of their projects. Under these regulations, five districts met the new requirements and fund releases were processed without further Board action.

STAFF ANALYSIS/STATEMENTS

District Position
In the *School District Appeal Request* (SAB 189), the District states that it "made a good faith effort to complete and electronically submit the PWC 100 forms within the required five days but was not successful." It also states that it attempted to contact DIR for assistance and includes a timeline of events to illustrate its actions. The complete SAB 189 is included as Attachment B for reference.

Staff Position
The OPSC is unable to release funds for two of the District's SFP projects due to non-compliance with EC Section 17070.70(b) which requires districts to comply with all laws pertaining to school construction projects. Labor Code Section 1771.4 states that all public works projects are subject to compliance monitoring and enforcement by DIR. In order to initiate the review process, Labor Code Section 1773.3 requires a school district to notify DIR within five (5) days of awarding the construction contract for public works projects. The current non-compliance issues concern DIR notification.

The project at Vintage High (58/66266-00-001) will seismically rehabilitate five classroom buildings and the project at Bel Aire Park Elementary (58/66266-00-002) is for seismic alterations to four classroom buildings, library, and administration areas. Construction contracts for both projects were awarded on May 16, 2013.

The District states though they made numerous attempts to submit the required PWC 100 and attempted to contact DIR for assistance, they were unsuccessful. In the case of both projects, the required PWC 100 was filed with DIR on March 6, 2013; nine months after the construction contracts were awarded. As a result of not meeting the DIR monitoring requirement, both projects are in violation of EC Section 17070.70(b) which requires projects to be in compliance with all school construction laws; therefore the OPSC is unable to release funds.

DIR cannot find records of the District's attempts to register the project or to reach out for assistance. DIR states that it was able to search their email servers and found two inquiries from the prime contractor related to a different project in Napa Unified and a response from DIR indicating that the District needed to register the project before any information from the contractor could be entered. Based on the information available and provided by the District to date, DIR is unable to confirm the receipt of phone calls.

A chart providing specific project details and a description of the non-compliance issue is included as Attachment C.

BOARD OPTIONS

Pursuant to the *Rules and Procedures of the State Allocation Board,* "Staff is providing the following option for the Board's consideration. A positive vote by six members is required for the Board to take action that is an alternative to Staff's administrative action. Absent a positive vote by six members of the Board, Staff's administrative action will stand and the school district's appeal will be considered closed."

Grant the District's appeal.

BOARD ACTION

In considering this Item, the SAB approved the District's appeal request to allow a release of funds for the full State apportionment amounts for seismic projects at Vintage High School (58/66266-00-001) and Bel Aire Park Elementary School (58/66266-00-002).

ATTACHMENT A

AUTHORITY

EC Section 17070.70 (b) states:

(b) The applicant school district shall comply with all laws pertaining to the construction, reconstruction, or alteration of, or addition to, school buildings.

LC Section 1771.4 states:

(a) All of the following are applicable to all public works projects that are otherwise subject to the requirements of this chapter:
(1) The call for bids and contract documents shall specify that the project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.
(2) The awarding body shall post or require the prime contractor to post job site notices, as prescribed by regulation.
(3) Each contractor and subcontractor shall furnish the records specified in Section 1776 directly to the Labor Commissioner, in the following manner:
(A) At least monthly or more frequently if specified in the contract with the awarding body.
(B) In a format prescribed by the Labor Commissioner.
(4) The department shall undertake those activities it deems necessary to monitor and enforce compliance with prevailing wage requirements.
(b) The Labor Commissioner may exempt a public works project from compliance with all or part of the requirements of subdivision (a) of this section if either of the following occurs:
(1) The awarding body has enforced an approved labor compliance program, as defined in Section 1771.5, on all public works projects under its authority, except those deemed exempt pursuant to subdivision (a) of Section 1771.5, continuously since December 31, 2011.
(2) The awarding body has entered into a collective bargaining agreement that binds all contractors performing work on the project and that includes a mechanism for resolving disputes about the payment of wages.
(c) (1) The requirements of paragraph (1) of subdivision (a) shall only apply to contracts for public works projects awarded on or after January 1, 2015.
(2) The requirements of paragraph (3) of subdivision (a) shall only apply to the following projects:
(A) Projects that were subject to a requirement to furnish records to the Compliance Monitoring Unit pursuant to Section 16461 of Title 8 of the California Code of Regulations, prior to the effective date of this section.
(B) Projects for which the initial contract is awarded on or after April 1, 2015.
(C) Any other ongoing project in which the Labor Commissioner directs the contractors or subcontractors on the project to furnish records in accordance with paragraph (3) of subdivision (a).
(D) All projects, whether new or ongoing, on or after January 1, 2016.

LC Section 1773.3 states:

(a) (1) An awarding agency shall provide notice to the Department of Industrial Relations of any public works contract subject to the requirements of this chapter, within five days of the award.
(2) The notice shall be transmitted electronically in a format specified by the department and shall include the name of the contractor, any subcontractor listed on the successful bid, the bid and contract award dates, the contract amount, the estimated start and completion dates, job site location, and any additional information the department specifies that aids in the administration and enforcement of this chapter.
(b) In lieu of responding to any specific request for contract award information, the department may make the information provided by awarding bodies pursuant to this section available for public review on its Internet Web site.

STATE OF CALIFORNIA
SCHOOL DISTRICT APPEAL REQUEST

STATE ALLOCATION BOARD
OFFICE OF PUBLIC SCHOOL CONSTRUCTION

SAB 189 (REV 10/09)

SCHOOL DISTRICT	APPLICATION NUMBER
Napa Valley Unified	58/66266-00-001 & 58/66266-00-002
SCHOOL NAME	COUNTY
Vintage High & Bel Aire Park Ave.	Napa
DISTRICT REPRESENTATIVE	E-MAIL ADDRESS
Wade Roach	wroach@nvusd.k12.ca.us

Purpose of Request:

The Napa Valley Unified School District requests that funds be released for apportioned seismic projects at Vintage High (5866266-00-001) and Bel Aire Park Ave. (58/66266-00-002). The Vintage High project received an apportionment is the amount of $541,891 and the Bel Aire Park Ave. project received an apportionment in the amount of $409,532.

Basis of Request:

☐ Law (Statute) _____

☐ Regulation _____

☒ Other (specify) Resolution of Labor Compliance Issues

Description:

Attached

SIGNATURE OF AUTHORIZED DISTRICT REPRESENTATIVE	DATE
	April 9, 2015

Napa Valley Unified School District
SAB 189 Attachment

Description

As referenced on the attached timeline, the Napa Valley Unified School District was apportioned seismic funds for two projects totaling $951,423 for which fund releases have been delayed due to the five day DIR requirement. The District made a good faith effort to complete and electronically submit the PWC 100 forms within the required five days but was not successful. In addition, the District contacted the DIR for assistance via telephone and left voice mail messages on numerous occasions but calls were not returned. As noted on the attached timeline, the PWC 100 forms were completed on February 28, 2014. The payroll records for the entirety of both projects have been uploaded to DIR's website which validates the payment of prevailing wage from the beginning to end of each project. Prior to the implementation of AB 436, the District contracted with a third party to initiate and enforce a Labor Compliance Program (LCP) to monitor and enforce compliance with applicable prevailing wage requirements for any public works project paid for in whole or in part with State bond funds.

The Seismic Mitigation Program provides funds for seismic repair, reconstruction, or replacement of the "most vulnerable" school facilities. Acknowledging the importance of safety of California's students, the SAB has made it a priority to release seismic funds. Napa Valley Unified has a detailed plan for seismic upgrades of facilities for which these funds were utilized. The two projects for which seismic funds have been apportioned are included in the District's plan. To date, the District has expended $1,748,164.80 to upgrade 8 buildings of the 75 buildings included in the plan. The District had planned to continue Phase Two and Three in 2014 and 2015, however, due to the lack of matching funds, the District could not move forward with the remaining seismic upgrades. The District's Board of Education had approved the overall plan, which was contingent on matching funds from the State of California. When the District receives the matching state funds from its first two projects, it will begin Phase 2 which is expected to take place in the summer of 2016.

After the recent August 24, 2014 6.0 earthquake, the District's prioritization of completing seismic upgrades was validated. This last earthquake occurred during non-school hours. However, in the case of an earthquake during school hours it is critical that seismic upgrades are completed on the District's "most vulnerable" buildings. The apportioned seismic funds of $951,423 were expended on these necessary upgrades in the interest of protecting Napa Valley Unified's students for which seismic funds were intended.

Napa Valley Unfied School District
Chronology: Vintage High (58/66266-00-001) & Bel Aire Park Avenue (58/66266-00-002)

Date	Action
1/9/13	In preparation for awarding seismic contracts, District registers with DIR. Registration confirmed with DIR email.
5/16/13	District awards seismic contracts for Vintage High (58/66266-00-001) and Bel Aire Park Ave. (58/66266-00-002)
5/20/13	District attempts to submit PWC 100 for seismic projects. District was unsuccessful. District calls DIR for assistance. District's call not returned. District attempts to submit PWC two more times and calls DIR for assistance two more times in May. District's calls are not returned.
June 2013	District continues to attempt to submit PWC 100 forms for seismic projects but is not successful. The District continues to contact DIR by phone for assistance with submitting the PWC 100 forms for seismic projects. DIR does not respond.
10/14/13	District submits seismic funding applications to OPSC for Vintage High and Bel Aire Park Elem.
1/17/14	OPSC requests confirmation DIR requirement was satisfied.
1/22/14	SAB approves Unfunded approvals for Vintage High (58/66266-00-001) and Bel Aire Park Ave. (58/66266-00-002)
1/27/14	District DIR documentation (PWC 100 search function, not actually PWC 100) submitted to OPSC. Because the District was not successful in completing and submitting the PWC 100 forms, they submitted the DIR documents which were generated.
1/28/14	OPSC confirms that the DIR documents do not satisfy DIR requirement.
2/24/14	Dennis Schrader, OPSC, requests chronology of seismic projects.
2/26/14	DIR confirms that the PWC 100 had not been successfully completed and submitted to DIR. Documents obtained by District and submitted to OPSC were a search utility indicating what project was being searched by the user.

ATTACHMENT B

Date	Action
2/28/14	District receives new password, completes and submits PWC 100 forms for seismic projects.
3/6/14	Don Evans, NVUSD, submits requested chronology to Dennis Schrader, OPSC, outlining issues with completing and submitting PWC 100 forms for seismic projects.
6/3/14	District submits Priority Funding Certrification Letter for Vintage and Bel Aire projects.
8/7/14	Bill Savidge, SAB, invited Don Evans, NVUSD, to participate on a panel to emphasize the need for SB 300 seismic funds to be released to qualified districts as soon as possible. Mr. Evans participated on the panel and all indications were that funds would be released in the near future.
8/20/14	Seismic projects receive apportionments.
9/23/14	Fund release documents submitted to OPSC.
1/29/2015	District meets with Bill Savidge, SAB, to discuss fund release and DIR issue.
3/17/2015	District's consultant meets with OPSC, Barbara Kampmeinert and Brian LaPask, to discuss DIR issue and the possibility of filing an appeal.
3/23/2015	District requests seismic projects be removed from the April 15 SAB item. The District plans to file an appeal by April 10 to be presented at a later SAB meeting.
3/24/2015	OPSC confirms receipt of request.
4/10/2015	Appeal submitted to request fund releases for seismic projects.

ATTACHMENT B

OHIO
SUPREME COURT
2015 APR 17 AM 11:54
MAIL ROOM

ATTACHMENT C

Current Labor Code Compliance Issues

Site Name	Application Number	Apportionment Total	Contract Award Date	Amount Of Work Out Of Compliance	DIR Notification Date	Project Completion Date	Months Before DIR Notification	Description
Vintage High	58/66266-00-001	$541,891	5/16/2013	$541,891	6/3/2014	6/17/2014	9 months	DIR Notification was approximately nine months after the construction contract award. According to Labor Code, monitoring was not received for the duration of the project. Therefore, the School District was not in compliance with Education Code Section 17070.70(b).
Bel Aire Park Elementary	58/66266-00-002	$409,532	5/16/2013	$464,988	6/3/2014	6/17/2014	9 months	DIR Notification was approximately nine months after the construction contract award. According to Labor Code, monitoring was not received for the duration of the project. Therefore, the School District was not in compliance with Education Code Section 17070.70(b).
	Total	$951,423						