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

LABOR CODE COMPLIANCE

PURPOSE OF REPORT

To inform the State Allocation Board (Board) about projects that are currently unable to submit a valid fund release request due to non-compliance with Labor Code requirements.

DESCRIPTION

There are four applications for three school districts totaling approximately $5.1 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 the following applications:

- Pittsburg Unified, Marina Vista Elementary 50/61788-00-010
- Perris Union High, Pinacate Middle 57/67207-00-004
- Lindsay Unified, Lindsay High 58/71993-00-001 and Kennedy Elementary 58/71993-00-002.

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.

(Continued on Page Two)

BACKGROUND (cont.)

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.

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
The Board has previously addressed several appeals concerning non-compliance with either the LCP or the PWM requirements set forth in Labor Code.

The Board has previously heard one action item and three appeals regarding LCP issues, and one appeal related to PWM requirements, 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 compliance 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.

(Continued on Page Three)

BACKGROUND (cont.)

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.

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

The OPSC is unable to release funds for four 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.

None of the four projects received DIR monitoring from the outset of construction as required by Labor Code. In each case, DIR was notified of the project months after the construction contracts were awarded and in some cases, after the projects were completed. As a result of not meeting the DIR monitoring requirement, each project is in violation of EC Section 17070.70(b) which requires projects to be in compliance with all school construction laws.

A chart providing specific project details and a description of the non-compliance issue is included as Attachment B. Attachment C provides information and scope of work included in each project and a timeline showing the relation between contract award, DIR notification, and completion date.

RECOMMENDATION

Seek Board direction.

BOARD ACTION

In considering this Item, the SAB approved a release of funds with a five percent (5%) reduction in the State apportionment for the following four district projects:

- Pittsburg Unified 50/61788-00-010
- Perris Union High 57/67207-00-004
- Lindsay Unified 58/71993-00-001 and 58/71993-00-002

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.

ATTACHMENT B

Current Labor Code Compliance Issues

District	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
Pittsburg Unified	Marina Vista Elementary	50/61788-00-010	$873,061	July-August 2012 (various dates)	$69,148	11/4/14	7/22/13*	29 months	DIR Notification was approximately 29 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).
Perris Union High	Pinacate Middle	57/67207-00-004	$4,040,475	8/15/12	$4,040,475	1/9/13	8/1/2013*	5 months	DIR Notification was approximately five 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).
Lindsay Unified	Lindsay Senior High	58/71993-00-001	$168,738	6/28/13	$168,738	06/05/14	9/26/13*	11 months	DIR Notification was approximately 11 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)..
Lindsay Unified	Kennedy Elementary	58/71993-00-002	$43,953	6/28/13	$43,953	06/05/14	9/26/13*	11 months	DIR Notification was approximately 11 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	**$5,126,227**						

*Estimated project completion date.

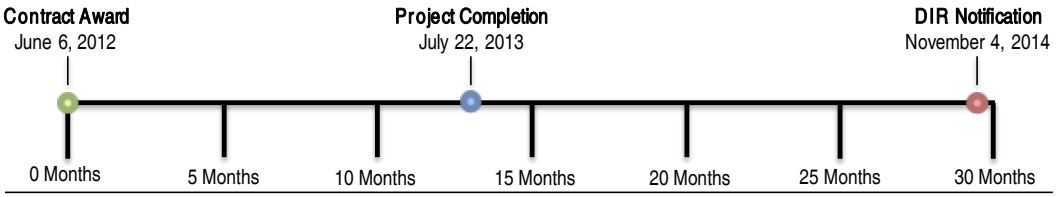
ATTACHMENT C

Project Descriptions

Pittsburg Unified, Marina Vista Elementary

The District requested eight pupil grants for a one classroom new construction project. The scope of the project was to purchase and install one portable classroom and add acreage to the site. The project funding consisted of the base grant, site acquisition funding, the Small Size Project grant, and the Prevailing Wage Monitoring grant. The State share totaled $873,071.

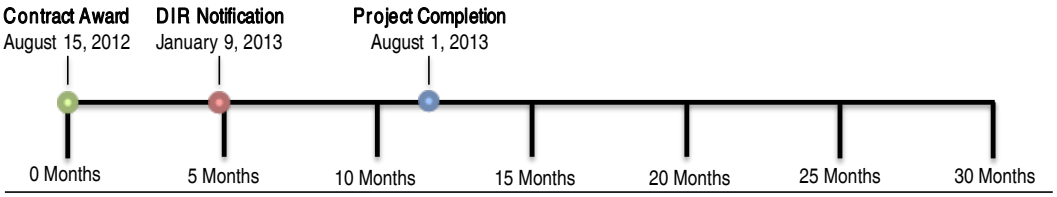
Project Timeline



Perris Union High, Pinacate Middle

The District requested 981 pupil grants for a 19 classroom modernization project. The project consisted of alterations to one classroom building which included drama, music, science, and special education classrooms. Funding consisted of the base grant, Fire Detection Alarm, Accessibility/Fire Code and Prevailing Wage Monitoring grants. The State share totaled $4,040,475.

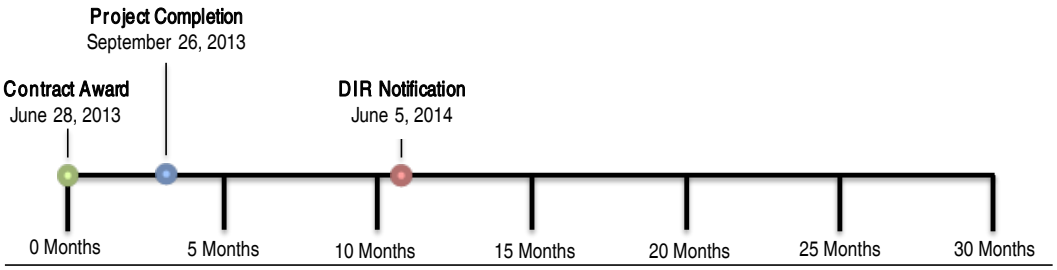
Project Timeline



Lindsay Unified, Lindsay Senior High School

The District received a Facility Hardship Apportionment to replace and relocate the site's main electrical panel due to health and safety risks associated with the deterioration of the equipment and electrical elements. The main electrical panel provides electrical power to the stadium and storm drain pumps. The State share totaled $168,738.

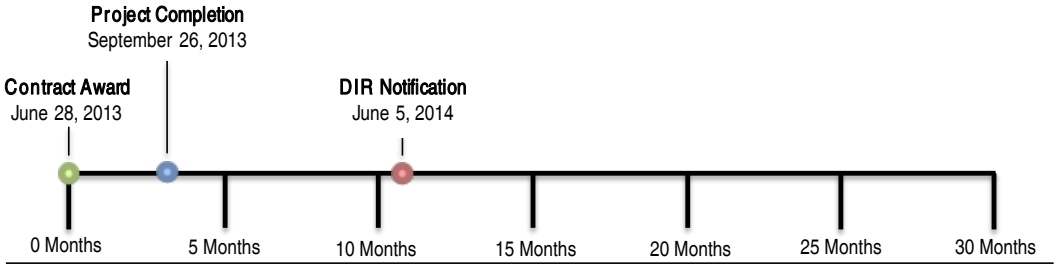
Project Timeline



ATTACHMENT C

Project Descriptions

Lindsay Unified, Kennedy Elementary School

The District received a Facility Hardship Apportionment to replace and relocate the site's main service switchboard due to health and safety risks associated with the deterioration of the equipment and electrical elements. The main service switchboard provides electrical power to the entire elementary school site, and also serves as the main electrical panel for the Lindsay High School Stadium, located adjacent to the site. The State share totaled $43,953.

Project Timeline