THE MERCED COE ITEM HAS BEEN WITHDRAWN

REPORT OF THE EXECUTIVE OFFICER
State Allocation Board Meeting, March 26, 2014

SCHOOL DISTRICT DATA

School District: ..... Cinnabar Elementary
County: ..... Sonoma
Application Number(s): 57/70649-00-002
School Name: ..... Cinnabar Elementary
Total District Enrollment: 175
Project Grade Level: K-6
Financial Hardship: .....YES
Date of Financial Hardship Status.....February 16, 2012
Last Approved Local Bond Measure.....NONE
Qualifying Financial Hardship Criteria: .....SFP Regulation Section 1859.81(c)(4)

PURPOSE OF REPORT

To present the Cinnabar Elementary School District's (District) appeal of the rescission of its priority funding apportionment and to request the release of the remaining grant funds for the project.

DESCRIPTION

The District is requesting reinstatement of its priority funding apportionment of $1,456,277 and an immediate fund release for its project. The funds were not released and the project was rescinded and its priority funding apportionment moved to the bottom of the Unfunded List (Lack of AB 55 Loans) because it did not comply with all laws pertaining to the construction of school buildings as stated in the Education Code Section (EC) 17070.70(b). Specifically the District did not meet the prevailing wage monitoring requirement pursuant to Labor Code (LC) Section 1771.3 and the associated notification requirement pursuant to LC Section 1773.3. Therefore, Staff returned the unprocessed Form SAB 50-05 to the District. The District filed a *School District Appeal Request* (Form SAB 189) requesting Staff to process the fund release.

AUTHORITY

See Attachment A.

BACKGROUND

The District's SFP modernization project is comprised of two phases with a separate contract awarded for each phase. The District began Phase One of its SFP modernization project in September 2012 to remodel the bathrooms at Cinnabar Elementary and awarded the contract on September 11, 2012. At the time, the project was on OPSC's Unfunded List (Lack of AB 55 Loans). The LC Section 1773.3 requires the District to submit the Public Works Contract form (PWC-100) within five days of awarding the contract for Phase One of its School Facility Program (SFP) modernization project. The District indicates its General Contractor and Architect were each contractually obligated to take care of all the prevailing wage requirements. The District states it was unaware that neither the General Contractor nor Architect submitted the PWC-100 form to the Department of Industrial Relations (DIR). It wasn't until March 12, 2013 that the PWC-100 form for the Phase One work was submitted to DIR as required by LC Section 1773.3.

The following table identifies funding for the project:

Funding	Amount	Comment
Design	$104,336	Funds Released on 4/30/2010
Adjusted Grant	$1,456,277	Remaining Priority Apportionment (Rescinded)
District Contribution	$151,172	
Total Project Financing	$1,711,785	

(Continued on Page Two)

BACKGROUND (cont.)

This SFP Modernization project was funded based on a set of Division of State Architect approved plans. The District awarded the work in two phases:

- Phase One, estimated cost of $193,000 (demolition, remodeling a toilet building, and materials)
- Phase Two, estimated cost of $1,002,341 (remodeling six buildings, upgrading a well, and replacing site utilities)

On May 22, 2013, the District received its apportionment and Phase Two of the project was started. The District's Phase Two contract was awarded on June 24, 2013 and the PWC-100 was submitted on June 25, 2013. The District applied to the State for funding on both Phases One and Two using the same *Application for Funding* (Form SAB 50-04).
On July 26, 2013, the District requested a fund release by submitting a *Fund Release Authorization* (Form SAB 50-05). However, in August 2013, before the $1,456,277 in remaining grant funds were issued to the District, the OPSC was verbally notified by the DIR that the PWC-100 form had not been submitted by the District within five days of awarding its Phase One contract on September 11, 2012. Since the District was out of compliance with this part of the prevailing wage law, it did not comply with EC Section 17070.70(b) which requires the district to comply with all laws pertaining to school construction. As a result, the remaining grant funds were not released to the District and its priority funding apportionment was rescinded and moved to the bottom of the Unfunded List (Lack of AB 55 Loans) with a new unfunded approval date of August 20, 2013.

See Attachment B for project timeline.

STAFF ANALYSIS / STATEMENTS

District Position

The District acknowledges the PWC-100 form was not submitted to the DIR within five days of awarding its Phase One contract as required under LC Section 1773.3. The contractor and/or architect of the project were contractually required to do so. When the District found out the PWC-100 was not filed, it immediately contacted the DIR and submitted the form on March 12, 2013.

Although the PWC-100 form was not submitted to the DIR on time, the District states it has complied with all prevailing wage requirements during Phase One as evident by an audit of the contractor's prevailing wage records in August 2013 by the DIR. In addition, the District states it has complied with all of the prevailing wage requirements, including the timely submittal of the PWC-100 form for Phase Two of the project. The District believes it has complied with the intent of the prevailing wage law on Phase One, acted in good faith, and has met all other prevailing wage requirements on both phases of its projects.

The District believes that denying funding to the whole project based solely on Phase One being out of compliance on the PWC-100 form would be inequitable because Phase One was a much smaller portion than Phase Two. During its initial meeting with OPSC to discuss its appeal, the District inquired about splitting the funding to pay for Phase Two only, if the Board could not reinstate funding to the entire project.

The District states the denial of approximately $1.5 million in funding will put it in extreme financial hardship. The District is open to paying any reasonable prevailing wage enforcement fees or penalty in exchange for the release of the $1.5 million in OPSC funding. The District states it owes the Phase Two general contractor over $1 million and without OPSC's funding, the District may be forced to obtain high interest loans or seek financial relief from the state.

In a revised appeal request dated January 21, 2014, the District requests the Board to also reinstate its priority funding apportionment, and restore its place in the priority in the funding order to where it was prior to its funding rescission.

See Attachment C for the full text of the District's appeal.

(Continued on Page Three)

Staff Position

Statutory Requirements

Districts seeking SFP funding must "comply with all laws pertaining to the construction, reconstruction, or alteration of, or addition to, school buildings" according to EC Section 17070.70(b). LC Section 1771 requires the payment of prevailing wages on public works contracts over $1,000. In addition, LC Section 1771.3 requires DIR to "monitor and enforce compliance with applicable prevailing wage requirements for any public works project paid for in whole or part out of public funds…that are derived from bonds issued by the state…" With some exceptions, prevailing wage monitoring by the DIR is required for most SFP projects with contracts awarded on or after January 1, 2012. Also, LC Section 1773.3 states in part, "An awarding agency whose public works contract falls within the jurisdiction of [Labor Code] Section 1771.3…shall, within five days of award, send a copy of the award to [DIR]." The District must submit to the DIR's Compliance Monitoring Unit (CMU) the required PWC-100 form for any State bond-funded project(s).

Notification to DIR of Awarded Contract

The online PWC-100 form is used by awarding bodies, such as school districts, to notify DIR of new projects subject to prevailing wage monitoring pursuant to Labor Code Section 1771.3 and the California Code of Regulations, Title 8, Section 16451, and to apprenticeship program requirements pursuant to Labor Code Section 1773.3. The PWC-100 notification allows DIR and awarding bodies to start the monitoring process for applicable projects. If a district awards a contract before receiving state bond funds, it needs to notify DIR of the contract and request prevailing wage monitoring within five days of awarding the contract to maintain eligibility to receive state bond funds. Also, the nature of DIR's monitoring activities detailed in California Code of Regulations, Title 5, Section 16461, such as concurrent review and verification of payroll records and visits to the job site, show that monitoring is intended to start when the contract has been awarded and continue while the project is underway.

The District did not submit the PWC-100 form as required by law within five days of the awarding its contract on Phase One. The District awarded its Phase One contract on September 11, 2012, but the PWC-100 form was not submitted to the DIR until March 12, 2013, after the five days of the award date required under LC Section 1773.3.

Review of Fund Release Authorization (Form SAB 50-05) and PWC-100

Part of the OPSC review of fund release requests is to check for compliance with the prevailing wage monitoring requirement, which is incorporated in SFP Regulation Section 1859.78.1(c) and states the following:

> *Pursuant to Labor Code Section 1771.3, any public works project paid in whole or in part from public funds that are derived from bonds issued by the State and for which the construction contract is awarded on or after January 1, 2012, is subject to the DIR monitoring and enforcement of compliance with applicable prevailing wage requirements, unless the project is exempt from this requirement pursuant to Labor Code Section 1771.3(b).*

In addition, SFP Regulation Section 1859.78.1(d) states in part: "Any school district failing to meet the requirements of (c) shall return to the State any State funding for the project, including interest…" Districts must also make certifications on the Form SAB 50-04 and the Form SAB 50-05 acknowledging the prevailing wage monitoring requirement and the requirement to return SFP funds if the district does not comply.

Conclusion

When requesting a fund release for applicable projects, districts submit a copy of the PWC-100, which Staff reviews to verify that prevailing wage monitoring has begun. On Phase One, Staff found that the District awarded the contract on September 11, 2012, but did not submit a complete PWC-100 until March 12, 2013, after the project was completed.

(Continued on Page Four)

STAFF ANALYSIS / STATEMENTS (cont.)

Staff Position (cont.)

The District submitted the PWC-100 form on time for Phase Two, and believes that rescinding the entire project funding because of a mistake on the Phase One portion will put them in an extreme financial hardship. However, the District was not in compliance and statue and SFP regulations do not allow project funds to be split because the Board approved funding to the entire SFP project, inclusive of both Phase One and Two. Additionally, even though the District is willing to accept a fee or penalty in exchange for release of the $1.5 million in funding, there is no mechanism in the EC related to the SFP or in the SFP regulations to assess prevailing wage enforcement fees or penalties for not submitting the PWC-100 form in time.

To receive state bond funds, the District needed to request prevailing wage monitoring within five days of awarding its Phase One contract. Pursuant to EC Section 17070.70(b), the District is required to meet the statutory requirements on both phases of its SFP project. Because the District did not comply with EC Section 17070.70(b) and LC Section 1773.3 on the Phase One portion of its project, Staff does not have the administrative authority to release the remaining grant funds to the District. Therefore, Staff is unable to approve the District's request.

BOARD OPTION

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 Cinnabar Elementary School District's appeal."

BOARD ACTION

In considering this Item, the SAB approved the reinstatement of the priority funding apportionment for the project (57/70649-00-002), effective March 26, 2014, with the following conditions which will be used to reduce the amount of the grant:

1. The Phase One contract in the amount of $193,000 that did not comply with the Labor Code is not considered part of the scope of work for this project.
2. The project shall receive a non-compliance penalty for not meeting Labor Code requirements; the penalty shall be $5,886.
   A. The non-compliance penalty [$5,886] was calculated based on the number of days this project was out of compliance with the law multiplied by the General Obligation Bond rate in place at the start date of non-compliance (3.99%**) multiplied by the value of the non-compliant contract [$193,000]. **Divided by 365 days to convert to a daily interest rate
3. There shall be a reduction of the entire Prevailing Wage Monitoring grant in the amount of $4,268.

Therefore, the total reduction in the grant is $203,154 [$193,000+$5,886+$4,268] and the reinstatement of the project apportionment is $1,253,123 [$1,456,277 - $203,154].

Education Code Section 17070.70(b) states, "The applicant school district shall comply with all laws pertaining to the construction, reconstruction, or alteration of, or addition to, school buildings."

Labor Code Section 1771.3 states:

(a)(1) The Department of Industrial Relations shall monitor and enforce compliance with applicable prevailing wage requirements for any public works project paid for in whole or part out of public funds, within the meaning of subdivision (b) of Section 1720, that are derived from bonds issued by the state, and shall charge each awarding body for the reasonable and directly related costs of monitoring and enforcing compliance with the prevailing wage requirements on each project.

(2)(A) The State Public Works Enforcement Fund is hereby created as a special fund in the State Treasury. All moneys received by the department pursuant to this section shall be deposited in the fund. Notwithstanding Section 13340 of the Government Code, all moneys in the fund shall be continuously appropriated to the Department of Industrial Relations, to monitor and enforce compliance with the applicable prevailing wage requirements on public works projects paid for in whole or part out of public funds, within the meaning of subdivision (b) of Section 1720, that are derived from bonds issued by the state and other projects for which the department provides prevailing wage monitoring and enforcement activities and for which it is to be reimbursed by the awarding body, and shall not be used or borrowed for any other purpose.

(B) Notwithstanding any other law, upon order of the Director of Finance, a loan in the amount of four million three hundred thousand dollars ($4,300,000) shall be provided from the Uninsured Employers Benefit Trust Fund to the State Public Works Enforcement Fund to meet the startup needs of the Labor Compliance Monitoring Unit.

(3) The Director of Industrial Relations shall adopt regulations implementing this section, specifying the activities, including, but not limited to, monthly review, and audit if appropriate, of payroll records, which the department will undertake to monitor and enforce compliance with applicable prevailing wage requirements on public works projects paid for in whole or part out of public funds, within the meaning of subdivision (b) of Section 1720, that are derived from bonds issued by the state. The department, with the approval of the Director of Finance, shall determine the rate, which the department may from time to time amend, that the department will charge to recover the reasonable and directly related costs of performing the monitoring and enforcement services for public works projects. The amount of bond funds utilized by an awarding body to pay the department's fee shall not exceed one-fourth of 1 percent of the state bond proceeds used for the public works projects, with any other remaining costs of monitoring and enforcing compliance to be paid by the awarding body from other funds authorized to be used to finance the project.

(4) The reasonable and directly related costs of monitoring and enforcing compliance with the prevailing wage requirements on a public works project incurred by the department in accordance with this section are payable by the awarding body of the public works project as a cost of construction. Notwithstanding any other provision of law, but subject to any limitations or restrictions of the bond act, the board, commission, department, agency, or official responsible for the allocation of bond proceeds from the bond funds shall consider and provide for amounts in support of the costs when allocating or approving expenditures of bond proceeds for the construction of the authorized project. The awarding body may elect not to receive or expend amounts from bond proceeds to pay the costs of the project; however, that election does not relieve the awarding body from reimbursing the Department of Industrial Relations from other funding sources for monitoring and enforcing prevailing wage requirements on the project pursuant to this section or any other applicable provision of law. The department shall annually provide information, as specified in regulations, to assist an awarding body to reasonably estimate the annual cost of monitoring and enforcing compliance.

(b) Paragraph (1) of subdivision (a) shall not apply to any contract for a public works project paid for in whole or part out of public funds, within the meaning of subdivision (b) of Section 1720, that are derived from bonds issued by the state if the contract was awarded under any of the following conditions:

(1) The contract was awarded prior to the effective date of implementing regulations adopted by the department pursuant to paragraph (3) of subdivision (a).

(2) The contract was awarded on or after the effective date of the regulations described in paragraph (1), if the awarding body had previously initiated a labor compliance program approved by the department for some or all of its public works projects and had not contracted with a third party to conduct such program, and requests and receives approval from the department to continue to operate its existing labor compliance program for its public works projects paid for in whole or part out of public funds, within the meaning of subdivision (b) of Section 1720, that are derived from bonds issued by the state, in place of the department monitoring and enforcing compliance on projects pursuant to subdivision (a).

(3) The contract is awarded on or after the effective date of the regulations described in paragraph (1), if the awarding body has entered into 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.

(c) This section shall not apply to public works projects subject to Section 75075 of the Public Resources Code.

Labor Code Section 1773.3 states:

An awarding agency whose public works contract falls within the jurisdiction of Section 1771.3, 1771.5, or 1777.5, or any other statute providing for the payment of fees to the Department of Industrial Relations for enforcing prevailing wage requirements on that project, shall, within five days of the award, send a copy of the award to the department. In lieu of responding to any specific request for contract award information, the department my make such information available for public review by posting on its Internet Web site. Within five days of a finding of any discrepancy regarding the ratio of apprentices to journeymen, pursuant to the certificated fixed number of apprentices to journeymen, the awarding agency shall notify the Division of Labor Standards Enforcement.

California Code of Regulations Section 16451 "Notice of Projects Subject to Requirements of Subchapter. [Text effective January 1, 2012]" states:

(a) The Awarding Body shall provide the Director with notice of any project that is subject to the requirements of this subchapter, including projects that are subject only to the notice requirement in this subpart as specified in section 16450(c) above, as follows:

(1) For any project paid for in whole or in part out of public funds, within the meaning of Labor Code Section 1720(b), that are derived from a bond issued by the state, the Awarding Body shall provide notice at the time it receives notice that the funding agency has awarded or released the funds, whichever is later.

(2) For any other project that is not subject to subpart (1) above, the Awarding Body shall provide notice at the time it awards the design-build contract, if using design-build contracting authority, or at the time it awards the initial prime contract, if using any other contracting authority.

(3) The notice required by this section shall be sent to the Office of the Director of Industrial Relations, Attention: Special Assistant, 455 Golden Gate Avenue, 10th Floor, San Francisco, CA 94102, and shall include the following information:

(A) The date of the contract;

(B) The names and contact information for the parties to the contract;

(C) A brief description of the work to be performed;

(D) The precise location or locations where the work will be performed;

(E) The estimated starting date of work on the project;

(F) The source or sources of any state-issued public works bond funding for the project, and the amounts paid or estimated to be paid by each source of that funding;

(G) The estimated total project costs, including the gross amount of every contract for "public works" within the meaning of sections 1720 and following of the Labor Code, but not including amounts paid for land acquisition or for internal costs or contracts that are not for public works within the meaning of sections 1720 and following of the Labor Code;

(H) The name, title, and contact information for the Awarding Body representative who will be responsible for carrying out the Awarding Body's obligations under this subchapter; and

(I) Whether the Awarding Body had entered into a collective bargaining agreement that binds all contractors and subcontractors performing work on the project and includes a mechanism for resolving disputes about the payment of wages.

(4) In lieu of submitting a written notice as specified in subpart (a)(3), the Awarding Body may complete and transmit the notice on line using the format and instructions for completing and transmitting the form specified on the Department's website.

(b) The Director may provide for the submission of a single notice to comply with the requirements of subpart (a) above and the notification requirements of Section 1773.3 of the Labor Code.

(c) The Call for Bids, Design-Build Request, and the contract or purchase order shall contain appropriate language concerning the requirements of Division 2, Part 7, Chapter 1 of the Labor Code and shall also state that the project is subject to the requirements of this subchapter, including the obligation to furnish certified payroll records directly to the Labor Commissioner in accordance with section 16461 below.

(d) On each job site that is subject to compliance monitoring and enforcement by the Department of Industrial Relations under this subchapter, the Awarding Body shall post or require the prime contractor to post a Notice containing the following language:

"This public works project is subject to monitoring and investigative activities by the Compliance Monitoring Unit (CMU) of the Division of Labor Standards Enforcement, Department of Industrial Relations, State of California. This Notice is intended to provide information to all workers employed in the execution of the contract for public work and to all contractors and other persons having access to the job site to enable the CMU to ensure compliance with and enforcement of prevailing wage laws on public works projects.

"The prevailing wage laws require that all workers be paid at least the minimum hourly wage as determined by the Director of Industrial Relations for the specific classification (or type of work) performed by workers on the project. These rates are listed on a separate job site posting of minimum prevailing rates required to be maintained by the public entity which awarded the public works contract. Complaints concerning nonpayment of the required minimum wage rates to workers on this project may be filed with the CMU at any office of the Division of Labor Standards Enforcement (DLSE).

Local Office Telephone Number: _____

"Complaints should be filed in writing immediately upon discovery of any violations of the prevailing wage laws due to the short period of time following the completion of the project that the CMU may take legal action against those responsible.

"Complaints should contain details about the violations alleged (for example, wrong rate paid, not all hours paid, overtime rate not paid for hours worked in excess of 8 per day or 40 per week, etc) as well as the name of the employer, the public entity which awarded the public works contract, and the location and name of the project.

"For general information concerning the prevailing wage laws and how to file a complaint concerning any violation of these prevailing wage laws, you may contact any DLSE office. Complaint forms are also available at the Department of Industrial Relations website found at www.dir.ca.gov/dlse/PublicWorks.html."

SFP Regulation Section 1859.78.1, "Modernization Additional Grant for Labor Compliance Program or Prevailing Wage Monitoring and Enforcement Costs" states in part:

(a) After determining all other funding authorized by these Regulations, for any project funded in whole or in part from Proposition 47 or Proposition 55 for which the construction contract is awarded prior to January 1, 2012, and for which the district is required under Labor Code Section 1771.7(a) and (b) to initiate and enforce a labor compliance program, the Board shall increase the per-unhoused pupil grant by the following calculation, less the district matching share required in Section 1859.79:

(1) Using the chart in Section 1859.71.4(b), determine the total amount of funding to be provided for the increased costs of a modernization project due to the initiation and enforcement of a LCP.

(2) Divide the amount determined in subsection (a)(1) by the total number of pupils, or by one if no pupils are assigned, in the approved application.

(b) After determining all other funding authorized by these Regulations, the Board shall increase the grant by 60 percent of one-fourth of one percent of the Total Projected Bond Apportionment for any project for which the construction contract is awarded on or after January 1, 2012.

(c) Pursuant to Labor Code Section 1771.3, any public works project paid in whole or in part from public funds that are derived from bonds issued by the State and for which the construction contract is awarded on or after January 1, 2012, is subject to the DIR monitoring and enforcement of compliance with applicable prevailing wage requirements, unless the project is exempt from this requirement pursuant to Labor Code Section 1771.3(b).

(d) Any school district failing to meet the requirements of (c) shall return to the State any State funding for the project, including interest, at the rate paid on moneys in the Pooled Money Investment Account or at the highest rate of interest for the most recent issue of State general obligation bonds as established pursuant to the Chapter 4 (commencing with Section 16720), of Part 3 of Division 4 of Title 2 of the Government Code, whichever is greater. Interest to be returned shall be calculated from the date at which funds were received by the school district until the date of the Board's finding.

….

The *Application for Funding (Form SAB 50-04)*

Specific Instructions, page 5 of 10, states in part:

17. Prevailing Wage Monitoring and Enforcement Costs

If the construction contract for this project was or will be awarded on or after January 1, 2012, check the appropriate box to indicate which of the following methods will be used to meet the requirement for prevailing wage monitoring and enforcement pursuant to Labor Code Section 1771.3:

- The DIR Compliance Monitoring Unit (CMU)
- A DIR-approved internal LCP
- A collective bargaining agreement that meets the criteria set forth in Labor Code Section 1771.3(b)(3).

….

Certification, page 9 of 10, states in part:

The district will contract or has contracted with the DIR for prevailing wage monitoring and enforcement pursuant to Labor Code Section 1771.3(a), if the construction contract is awarded on or after January 1, 2012 and the district has not obtained a waiver for the requirement, pursuant to Labor Code Section 1771.3(b). The district understands that if it fails to meet this requirement, it will be required to repay all state bond funds received including interest…

The *Fund Release Authorization* (Form SAB 50-05)

General Information, page 1 of 3, states in part:

The following documents must be submitted with this form (as appropriate):

….

4. For all projects for which construction contracts are awarded on or after January 1, 2012: Acknowledgement from the Department of Industrial Relations (DIR) of receipt of the district's notice. However, if the construction contract was awarded between January 1, 2012 and July 1, 2012, a copy of the Notice to DIR from the district with proof of mailing will be accepted in lieu of the DIR acknowledgement. The district understands that if it fails to meet the requirements in Labor Code Section 1771.3, it will be required to repay all state bond funds received including interest.

….

Page 3 of 3 states in part:

I certify, as the District Representative, that the information reported on this form is true and correct and that:

….

If required by Labor Code Section 1771.3(a), the district will contract with the DIR for the required Prevailing Wage Monitoring and Enforcement, or the requirement is waived pursuant to Labor Code Section 1771.3(b). The district understands that if it fails to meet this requirement, it will be required to repay all state bond funds received including interest.

Attachment B
Project Timeline

- September 22, 2008—Design only, SFP funding application submitted to OPSC
- February 24, 2010—receives a design apportionment of approximately $104K
- April 30, 2010—Design funds are released
- February 21, 2012—the District submits an *Application for Funding* (SAB Form 50-04) for the entire project
- April 6, 2012— The OPSC sends 15 day letter to district advising district of DIR requirements
- August 22, 2012—District receives an Unfunded Approval
- September 11, 2012—the District awards Phase One contract in the amount of $193,000
- February 2013—OPSC is notified by DIR of a possible Compliance Monitoring Unit issue on this project
- March 12, 2013—after completion of Phase One, the district notifies the DIR by submitting the PWC-100 form
- May 22, 2013—District receives an apportionment for $1,456,277 from Proposition 1D
- June 24, 2013—District awards a $1,002,341 contract for Phase Two
- June 25, 2013—District submits the required PWC-100 form to the DIR for Phase Two
- July 26, 2013—OPSC receives the District's *Fund Release Authorization* (SAB Form 50-05) dated July 19, 2013
- August, 2013—OPSC receives verbal notice from DIR that the District was out of compliance
- October 9, 2013— DIR letter to District state that the District did not notify DIR of the project within five days after the contract was awarded in violation of Labor Code section 1773.3. (See Attachment C)
- October 15, 2013—OPSC rescinds unfunded apportionment, and moves the project to the bottom of the unfunded list
- October 28, 2013—OPSC receives the District's *Appeal Request* (For SAB 189) dated October 17, 2013
- January 23, 2014—OPSC receives a revised *Appeal Request* (For SAB 189) dated January 21, 2014 clarifying its request for reinstatement to the Unfunded List in the order it was originally approved.

STATE OF CALIFORNIA
SCHOOL DISTRICT APPEAL REQUEST

STATE ALLOCATION BOARD
OFFICE OF PUBLIC SCHOOL CONSTRUCTION

SAB 189 (REV 10/09)

SCHOOL DISTRICT	APPLICATION NUMBER
Cinnabar Elementary	57/70649-00-002
SCHOOL NAME	COUNTY
Cinnabar Elementary	Sonoma
DISTRICT REPRESENTATIVE	E-MAIL ADDRESS
Mr. Chuck Bush, Superintendent	cbush@cinnabar.k12.ca.us

Purpose of Request:
To appeal the October 14, 2013 decision of the Office of Public School Construction, which rescinded the Cinnabar School District's priority funding apportionment.

Basis of Request:

- [x] Law (Statute) Labor Code 1773.3
- [ ] Regulation
- [x] Other (specify) Inequitable Consequence

Description:
Please see the enclosed documents.

SIGNATURE OF AUTHORIZED DISTRICT REPRESENTATIVE	DATE
	1-21-14

Background Information

- District began Phase I of its $1.7 million Modernization Project ("Project") in September of 2012. At the time the Project began, the District was on the OPSC unfunded list; however, the District anticipated that it would be placed on the funded list before the completion of the Project. As such, the Project Architect and the General Contractor were contractually obligated to comply with the prevailing wage requirements of Labor Code §§1770 et seq.
- In March 2013, the District discovered that while the General Contractor had been complying with the general prevailing wage requirements, neither the General Contractor nor the Architect had formally noticed DIR of the Project through the submission of form PWC-100, as they were contractually required to do. Immediately upon this discovery, the District submitted the PWC-100 form to DIR.[1]
- On May 22, 2013, the District was placed on the OPSC funded list and Phase II of the Project was initiated. In August 2013 when OPSC went to issue the $1.5 million to the District, OPSC received verbal notice from DIR that the District was out of compliance with the prevailing wage requirements. The District immediately followed up with DIR about the compliance issue, and on August 26, 2013 the District received an email from Jorge Delgadillo at DIR informing them that the Project was in compliance.[2] However, when OPSC subsequently contacted DIR to get an updated compliance determination, DIR again informed OPSC that the District was not in compliance.
- On September 23, 2013, the District submitted a letter to DIR requesting reconsideration of its determination.[3] On October 9, 2013, DIR issued a response letter to the District.[4] DIR concluded that although the District was in compliance with the prevailing wage requirements, it did not submit the PWC-100 form within five days of the Phase I project award, as required by California Labor Code §1773.3.

District's Position

The District acknowledges that it did not submit the PWC-100 form within five days of the Phase I project award as required under Labor Code §1773.3. However, the District reasonably assumed that this form had been submitted to DIR since the Project General Contractor and Architect were each contractually required to ensure that the PWC-100 form was submitted to DIR in a timely manner. Unfortunately, neither of these entities fulfilled their contractual obligations and therefore, unbeknownst to the District, the PWC-100 form was never timely filed. Nevertheless, when the District learned that the PWC-100 form had not been previously submitted, it immediately contacted DIR and submitted the form. The District complied with all other prevailing wage requirements during Phase I of the Project, as clearly evidenced by Mr. Delgadillo's audit of the District's records and compliance determination in August 2013. In addition, the District has complied with all prevailing wage requirements, including the timely submittal of the PWC-100 form, for Phase II of the Project. During this entire project, the District has complied with the intent of the law and has acted in good faith to meet all of the prevailing wage requirements.

The denial of $1.5 million in funding will have a devastating effect on this $2 million-annual-budget District. The District currently owes its Phase II general contractor over $1 million and without the OPSC funding the District will be forced to obtain high interest loans or seek financial relief from the state, either of which will put the District in extreme financial hardship. The withholding of these funds from the District solely because of its untimeliness in submitting the PWC-100 form is an unfair and inequitable consequence. As an alternative, the District is proposing to pay any prevailing wage enforcement fees or penalty fees that OPSC determines are reasonable in exchange for the release of the $1.5 million in OPSC funding.

In addition to requesting reinstatement of the project funding, the district respectfully requests that the project be placed back on the Unfunded List in the order it was originally approved and placed.

Thank you for your consideration of this appeal request.

---

[1] Exhibit A
[2] Exhibit B
[3] Exhibit C
[4] Exhibit D

Exhibit A

XFINITY Connect **murchee@comcast.net**

± Font Size -

Project Creation

From : pwc100@dir.ca.gov Tue, Mar 12, 2013 10:25 AM
Subject : Project Creation
To : pmurch@cinnabar.k12.ca.us

Hello Patty,

Thank you for using the DAS PWC website.

Your project **Cinnabar School Modernization Project** has been created on 12 Mar 2013. The Division of Labor Standards Enforcement may be contacting your agency if your project contains state construction bond funding or uses a statute requiring Compliance Monitoring. Thank you for your submission.

Sincerely,

Department of Industrial Relations
State of California

--
Notice to Recipient:

Information contained in this message may be privileged, confidential and protected from disclosure. If you are not an intended recipient, it is strictly prohibited to use, disseminate or copy this communication. If you have received this in error, please reply to the sender and then delete the message.

Thank you.

Project Information

FORM

Form Type:	PWC-100	**Project Award Date:**	9/11/2012

AWARDING BODY INFORMATION

Name:	Cinnabar Elementary School District	**Primary Contact:**	Patty Murch
Address:	286 Skillman Lane Petaluma CA 94952	**Primary Email:** **Work Phone:**	pmurch@cinnabar.k12.ca.us 7077654345

PROJECT INFORMATION

Project Name:	Cinnabar School Modernization Project	**Project #:**	1
Brief Description:	Student Restrooms and Site Utilities	**Contract #:**	1
Contract Amount:	$193000.00	**Number of Prime Contractors:**	1
Total Project Cost:	$253321.00		
Alternative Model:	None Apply		
Physical Address:	286 Skillman Lane Petaluma, CA 94952 SONOMA	**Billing Address:**	286 Skillman Lane Petaluma, CA 94952

Project Information 2

PWC-100

Project Name: Cinnabar School Modernization Project **Project #:** 1 **Contract #:** 1 **Status:** New Submission

PROJECT INFORMATION

Project Dates

First Advertised Bid:	4/15/2012	**Estimated or Actual Start:**	10/2/2012
Estimated or Actual Completion:	2/28/2013		

State Statutes
Labor Code #1771.5(a)(2) (CMU used on all projects)

State Bond Source	Estimated Bond Amount
No state bonds used on project	

Request for DIR/CMU Monitoring and Enforcement in order to qualify in the future for state bond funding for this project. Yes

Compliance and Agreements:

Is language included in the Contract Award to effectuate the requirements of Section 171, 1774 - 1776, 1777.5,1813 and 1815 of the Labor Code?	Yes
Will you operate a DIR-Approved Labor Compliance Program(LCP) for this project?	No
Is there a Project Labor Agreement (PLA) associated with this project?	No

Contractor Information

Project Superintendent/Construction Manager:

Email Address	Name	Title	Work Phone
cbush@cinnabar.k12.ca.us	Chuck Bush	Superintendent	707-765-4345

Project Manager

Email Address	Name	Title	Work Phone
cbush@cinnabar.k12.ca.us	Chuck Bush	Superintendent	707-765-4345

General Contractor1

CSLB/Certificate Number	NAME	Address	Email	Classification
729437	G C C I INC	P O BOX 11039 SANTA ROSA, CA 95406	ShariGentry@gccinc.com	ELECTRICIANS PAINTERS CARPENTERS CEMENT MASONS DRYWALL/LATHERS LABORERS TILE WORKERS DRYWALL FINISHER

Exhibit B

From: "Jorge@DIR Delgadillo" <JDelgadillo@dir.ca.gov>
To: "Patty Murch" <pmurch@cinnabar.k12.ca.us>
Sent: Monday, August 26, 2013 4:23:40 PM
Subject: RE: CMU Labor Compliance Question

Patty, after reviewing the information that was submitted for this project, everything seems to be complete and in compliance. Thank you for the information that was requested.

Jorge Delgadillo
Industrial Relations Representative
Division of Labor Standards Enforcement
Public Works/Compliance Monitoring Unit
2031 Howe Avenue, Suite 100
Sacramento, CA 95825
Office: (916)263-2900
Fax: (916)263-2906

From: Patty Murch [mailto:pmurch@cinnabar.k12.ca.us]
Sent: Monday, August 26, 2013 2:45 PM
To: Delgadillo, Jorge@DIR
Subject: Fwd: CMU Labor Compliance Question

Jorge, Here are the documents that you requested in your email below. Thanks for your call earlier today. I hope that you are able to review these and let me know that we are in compliance with this phase of the project tomorrow morning. If there is anything else we need to do, please let me know. Hopefully, we can have all of this done by the end of the day tomorrow.

Thanks,
Patty Murch
Business Manager
Cinnabar ESD
707-765-4345

---------- Forwarded message ----------
From: <murchee@comcast.net>

9/18/2013 10:37 AM

Exhibit C

FILE COPY

SCHOOL AND COLLEGE LEGAL SERVICES
of California

A Joint Powers Authority serving school and college districts throughout the state

General Counsel
Carl D. Corbin

Attorneys
Monica D. Batanero
Nancy L. Klein
Margaret M. Merchat
Loren W. Soukup
Patrick C. Wilson
Frank Zotter, Jr.

Susanne K. Reed
(1947 – 2010)

Reply to:
Santa Rosa Office
5350 Skylane Blvd.
Santa Rosa, CA 95403
(707) 524-2690
Fax: (707) 578-0517
santarosa@sclscal.org

Of Counsel
Robert J. Henry
Janna L. Lambert
Virginia A. Riegel

September 23, 2013

Christine Baker, Director
California Department of Industrial Relations
455 Golden Gate Avenue, 10th Floor
San Francisco, CA 94102

Via Certified Mail

Re: Cinnabar Elementary School District
Sonoma County, California
DIR ID # 100011276
Compliance Monitoring Unit Review

Dear Ms. Baker:

On behalf of the Cinnabar School District ("District"), we request your review of the District's Compliance Monitoring Unit process and a determination of compliance for purposes of receiving funding through the Office of Public School Construction ("OPSC").

To give you some background information, the District began Phase I of its $1.7 million Modernization Project ("Project") in September of 2012. At the time the Project began, the District was on the OPSC unfunded list; however, the District anticipated that it would be placed on the funded list before the completion of the Project. As such, the Project Architect and the General Contractor were contractually obligated to comply with the Department of Industrial Relations ("DIR") Compliance Monitoring Unit ("CMU") process.

In March 2013, the District discovered that while the General Contractor had been in contact with DIR and had been complying with the prevailing wage requirements of Labor Code §§1770 et seq., DIR had not been formally noticed of the Project through the submission of form PWC-100. Immediately upon this discovery, the District submitted the PWC-100 form to DIR. The District was subsequently contacted by Jorge Delgadillo at DIR who requested all of the Project payroll records to ensure the District had been in compliance with the CMU requirements. The District, through its General Contractor, promptly complied with Mr. Delgadillo request and submitted all of the requested records.

On May 22, 2013, the District was placed on the OPSC funded list and Phase II of the Project was initiated. In August 2013 when OPSC went to issue the $1.5 million to the District,

OPSC received verbal notice from DIR that the District was out of compliance with the CMU requirements. The District immediately followed up with Mr. Delgadillo about the compliance issue, and on August 26, 2013 the District received the enclosed email from Mr. Delgadillo informing them that the Project was in compliance. However, when OPSC subsequently contacted DIR to get an updated compliance determination, DIR informed OPSC that the District was not in compliance.

On September 19, 2013, the District held a conference call with Rick Asbell, Chief of Fiscal Services at OPSC, and Mark Woo-Sam, Deputy Director of Legislation at DIR. During the call, Mr. Woo-Sam informed the District that he believed the District was out of compliance based on the "untimeliness" of the PWC-100 submittal. However, Mr. Woo-Sam was unable to provide the District with the legal grounds for which DIR was basing its determination, stating instead that he was unaware of all of the facts and therefore, could not provide a specific explanation. Mr. Woo-Sam requested that a letter be sent to you and him with a statement of the District's legal position. Below, please find the District's position.

The District acknowledges that it did not submit the PWC-100 form until March 2013, when it learned that this form had not been previously submitted. However, up until that point the General Contractor, GCCI, Inc., had been in contact with DIR and had been complying with all other CMU requirements. This is clearly evidenced by Mr. Delgadillo' s audit of the District's records and compliance determination in August 2013, which found no prevailing wage violations.

Title 8 of the California Code of Regulations, §16451, states in pertinent part, as follows:

> (a) The Awarding Body shall provide the Director with notice of any project that is subject to the requirements of this subchapter, including projects that are subject only to the notice requirement in this subpart as specified in section 16450(c) above, as follows:
>
> (1) For any project paid for in whole or in part out of public funds, within the meaning of Labor Code Section 1720(b), that are derived from a bond issued by the state, <u>the Awarding Body shall provide notice at the time it receives notice that the funding agency has awarded or released the funds, whichever is later</u>.
>
> . . .
>
> (emphasis added)

The District received notice of the funding from OPSC on May 22, 2013 and OPSC has still not released the funds to the District. As such, pursuant to the above cited authority, the District's requirement to formally notify DIR of the Project has still not occurred. The District is unable to find any legal authority which required them to submit the PWC-100 form in September of 2013 when the Phase I Project began.

It is the District's hope that this matter can be clarified and resolved as soon as possible. The District is more than willing to pay any CMU enforcement fees that DIR determines may be reasonable to remedy this situation. However, the elimination of the District's entitlement to the $1.5 million in OPSC funds will have devastating consequences for this small school district. This Project is almost complete and the District currently owes approximately $1.5 million in outstanding bills that it cannot pay absent the funding from OPSC.

In light of the above, I respectfully request that a determination be made that the District is in compliance with the CMU requirements and therefore, eligible to receive the $1.5 million in OPSC funding. I look forward to hearing from you.

Thank you.

Sincerely,

Loren W. Soukup
Assistant General Counsel

Enclosure

cc: Mark Woo-Sam, Deputy Director of Legislation, Department of Industrial Relations
Rick Asbell, Chief of Fiscal Services, Office of Public School Construction
Lois Wolk, 3rd District Senate Member, California State Senate
Marc Levine, 10th District Assembly Member, California State Assembly
Chuck Bush, Superintendent/Principal, Cinnabar School District

From: "Jorge@DIR Delgadillo" <JDelgadillo@dir.ca.gov>
To: "Patty Murch" <pmurch@cinnabar.k12.ca.us>
Sent: Monday, August 26, 2013 4:23:40 PM
Subject: RE: CMU Labor Compliance Question

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Jorge Delgadillo
Industrial Relations Representative
Division of Labor Standards Enforcement
Public Works/Compliance Monitoring Unit
2031 Howe Avenue, Suite 100
Sacramento, CA 95825
Office: (916)263-2900
Fax: (916)263-2906

From: Patty Murch [mailto:pmurch@cinnabar.k12.ca.us]
Sent: Monday, August 26, 2013 2:45 PM
To: Delgadillo, Jorge@DIR
Subject: Fwd: CMU Labor Compliance Question

Jorge, Here are the documents that you requested in your email below. Thanks for your call earlier today. I hope that you are able to review these and let me know that we are in compliance with this phase of the project tomorrow morning. If there is anything else we need to do, please let me know. Hopefully, we can have all of this done by the end of the day tomorrow.

Thanks,
Patty Murch
Business Manager
Cinnabar ESD
707-765-4345

---------- Forwarded message ----------
From: <murchee@comcast.net>

Exhibit D

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
Office of the Director
1515 Clay Street, 17th Floor
Oakland, California 94612

Edmund G. Brown Jr., *Governor*

October 9, 2013

Cinnabar School District
286 Skillman Lane
Petaluma California 94952

Attention: Chuck Bush, Superintendent/Principal

Re: Status of DIR Compliance Monitoring on Cinnabar School District's Modernization Project

Dear Superintendent Bush:

I am writing in response to the September 23, 2013 letter from your legal counsel and your communications with LWDA General Counsel Mark Woo-Sam. I want to clarify the actions and position of my department with respect to your Modernization Project and obligations under the California Labor Code.

As you know, Labor Code section 1771.3 requires the Department of Industrial Relations (DIR) to monitor and enforce prevailing wage compliance on most state-bond funded projects. Because many districts choose to start their projects before applying for state bond funds, DIR will monitor and enforce compliance on those projects by agreement, so that the project can meet that requirement for bond-funding if the district chooses to apply for or receive such funding. Please note, however, that the DIR does not enforce bond-funding requirements, and the decision to grant or withhold bond funds is strictly up to the bond-funding agency.

Our records show that DIR first became aware of the Cinnabar School District's Modernization Project through an e-mail inquiry from the district's Business Manager Patty Murch in February of this year. Ms. Murch was seeking verification that DIR had notice of the project, but at the time DIR and its Compliance Monitoring Unit (CMU) had no record of the project and consequently had not monitored or enforced compliance on the project.

Labor Code section 1773.3 requires school districts and other awarding bodies to notify DIR within five days of the award of any contract for public works that falls within the jurisdiction of sections 1771.3, 1771.5, or 1777.5 of the Labor Code or other statutes requiring DIR monitoring. The specific references to sections 1771.3, 1771.5, and other statutes requiring DIR monitoring were just added to this law in June of 2012. However, the obligation to notify DIR of contracts within the jurisdiction of section 1777.5 – meaning projects of $30,000 of more that use apprenticeable crafts or trades (and thus are subject to public works apprenticeship requirements) – has been part of the law for nearly 40 years.

The PWC-100 form is used by awarding bodies to comply with Labor Code section 1773.3, and specifically to notify DIR of projects that will be subject to public works apprenticeship requirements, DIR compliance monitoring and enforcement, or both. For projects that require DIR compliance monitoring and enforcement, the PWC-100 starts the process of getting the project registered and then having contractors submit certified payroll records directly to the CMU.

Our records show that Cinnabar submitted a PWC-100 for Phase I of its Modernization Project on March 12, 2013. According to that notice, the project contract was awarded on September 11, 2012 to GCCI, Inc.; the contract amount was $193,000; the work was commenced on October 2, 2012 and completed on February 28, 2013; and several apprenticeable trades were used. CMU staff reviewed the PWC-100 and verified that Cinnabar was requesting DIR/CMU monitoring in order to qualify for bond funding. Because the project was not yet bond-funded and might never be bond-funded, Cinnabar's use of the CMU was considered voluntary at that point and thus required a separate agreement between Cinnabar and the CMU.

After the project was registered, certified payroll reports for the completed Phase I were submitted and reviewed after the fact. As several correspondences have noted, the CMU auditor Jorge Delgadillo found no compliance issues in the Phase I work. "Compliance" in this instance meant compliance with prevailing wage requirements. It did not refer to or imply that Cinnabar was in compliance with Labor Code section 1771.3's requirement to use the CMU on the project as a condition for receiving bond-funding. The latter compliance determination is made by the bond-funding agency and is well outside the role or scope of authority of a CMU auditor.

DIR records show that Cinnabar submitted another PWC-100 for Phase II of its Modernization Project on June 25, 2013, which was five days after the contract for that phase was awarded to prime contractor FRC, Inc. According to that notice, the work was to commence on June 25, 2013, and estimated to be completed on September 27, 2013.

DIR staff confirmed these PWC-100 submission dates and related contract award and completion dates when the Office of Public School Construction (OPSC) staff asked for this information in July. Your counsel's letter asserts that the district was not under a legal obligation to notify DIR of the project until bond funds were released, citing our regulation at section 16451(a)(1) of title 8, California Code of Regulations. That regulation focused on what notice was required after a district became legally obligated to use the CMU, but it did not address the distinct issue of a district using the CMU on a voluntary basis from the start of its project in order to maintain its eligible for bond funds on a reimbursement basis. As has been noted, there was an overriding statutory obligation under Labor Code section 1773.3 to notify DIR of the project within five days after the contract was awarded. Cinnabar has confirmed that this did not occur, and consequently DIR was not aware of the project and did not perform CMU monitoring activities during the construction period of September 2012 through February 2013.

I wish to reemphasize that DIR has made no determination about Cinnabar's compliance with bond-funding requirements or entitlement to bond-funding for its modernization project. Those are determinations for the State Allocation Board to make and undoubtedly take into account many other considerations in addition to the requirements of Labor Code section 1771.3.

I hope this clarifies our position for you and that I have not overlooked or misconstrued any of the pertinent facts. If you need or desire a further clarification on any point, please let me know.

Sincerely,

Christine Baker

Christine Baker, Director of Industrial Relations

cc: Loren W. Soukup, Assistant General Counsel
School and College Legal Services of California

Rick Asbell, Chief of Fiscal Services
Office of Public School Construction

Hon. Lois Wolk
California State Senate

Hon. Marc Levine
California State Assembly

Mark Woo-Sam, General Counsel
Labor and Workforce Development Agency

John Cumming, Counsel
DIR, Office of the Director, Legal Unit

Eric Rood, Assistant Chief
DIR, Division of Labor Standards Enforcement

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