REPORT OF THE EXECUTIVE OFFICER
State Allocation Board Meeting, August 26, 2015

SCHOOL DISTRICT DATA	
School District: .....SAUSALITO MARIN CITY	County: ..... MARIN
Application Number:..... 58/65474-00-001	School Name: .. Bayside Martin Luther King Jr. Academy
Total District Enrollment:..... 521	Project Grade Level:..... K-8
Financial Hardship:.....NO	

PURPOSE OF REPORT

To present the Sausalito Marin City School District's (District) request to allow a release of funds for an apportioned Seismic Mitigation Program (SMP) project at Bayside Martin Luther King, Jr. Academy.

DESCRIPTION

The District has a Facility Hardship application for seismic mitigation work totaling $375,518 for which it is unable to submit a valid fund release request, because it is not in compliance with EC Section 17070.70(b), which requires districts to comply with all laws pertaining to school construction projects. In this case, the project is 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 the issue and provide background on how similar issues have previously been resolved. Staff is seeking Board direction for the next steps on this project at Bayside Martin Luther King, Jr. Academy.

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.

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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
Between 2011 and 2014, the Board heard one action item and three appeals regarding LCP issues, and one appeal related to prevailing wage monitoring (PWM) requirements, that resulted in bond source switches and/or apportionment reductions. 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.

At the June 2015 meeting, the Board heard two items related to non-compliance with PWM requirements of Labor Code for four school districts representing six projects. The Board approved a five percent reduction for four of the projects and no reduction for two of them due to unique circumstances related to ongoing seismic mitigation issues.

STAFF ANALYSIS/STATEMENTS

The OPSC is unable to release funds for the District's SFP project 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 District received an apportionment for Seismic Mitigation Program funding to rehabilitate four classrooms at Bayside Martin Luther King Jr. Academy (58/65474-00-001). In lieu of rehabilitation, the District elected to demolish the four classrooms and reconstruct a new building at a different location as part of a larger project on the site. Construction contracts were awarded on April 9, 2013 and June 27, 2013.

Labor Code requires the District to notify DIR within five (5) days of the contract award. The contract awarded on June 27, 2013 was for the demolition of the existing building. The District filed a PWC 100 for this contract with DIR on July 10, 2013, which was 13 days after the contract award. The contract awarded on April 9, 2013 was for the construction of the new building. The District filed a PWC 100 with DIR on July 13, 2015, which was two years and two months after the contract award. A chart providing specific project details and a description of the non-compliance issue is included as Attachment B.

As a result of not meeting the DIR monitoring requirement, the project is 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.

RECOMMENDATION

Staff is seeking Board direction.

BOARD ACTION

In considering this Item, the Board approved a release of funds for an apportioned Seismic Mitigation Program project at Bayside Martin Luther King, Jr. Academy, with a five percent (5%) reduction in the State apportionment.

ATTACHMENT A

AUTHORITY

Education Code 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.

Labor Code (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

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
Bayside Martin Luther King, Jr. Academy Middle School	58/65474-00-001	$375,518	6/27/2013	$822,480	7/10/2013	8/23/2013	13 Days	DIR Notification was approximately thirteen days 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).
			4/9/2013	$1,215,000	7/13/2015	08/23/13	2 years, 2 months	DIR Notification was approximately two years and two 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	**$375,518**						

THE FINANCIAL HARDSHIP CRITERIA FOR CONSIDERATION OF DEVELOPMENT FEES ITEM HAS BEEN WITHDRAWN.