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NEW SCHOOL DISTRICT PROCUREMENT LAWS IMPOSE EXTREMELY STRINGENT “SKILLED WORKFORCE” REQUIREMENTS

Governor Brown recently signed two new laws authorizing school districts to award construction contracts by means other than competitive bidding. These laws, AB 1185 and AB 1358, also introduce extremely stringent “skilled workforce” requirements. The skilled workforce requirements will make it extremely difficult for most nonunion contractors to perform work on projects awarded pursuant to the new laws. The laws are part of an ongoing effort by unions and their legislative allies to promote union contractors and deter nonunion companies from participating in construction of public works.

AB 1185, which adds Sections 20119 through 20119.7 to the Public Contract Code, establishes a pilot program allowing Los Angeles Unified School District (“LAUSD”) to use a best value procurement method for projects that exceed \$1 million. Under AB 1185, LAUSD can award contracts based on the best combination of price and qualifications, as determined through objective criteria. AB 1185 prohibits LAUSD from prequalifying or short listing a company for an award based on the best value method unless the company provides an “enforceable commitment” that the company and its subcontractors at every tier will use a skilled and trained workforce to perform all work on the project or contract that falls within an apprenticeable occupation in the building and construction trades.

A similar law, AB 1358 allows school districts to enter into design build contracts in excess of \$1 million, with the contracts to be awarded either to the lowest competitive bidder or using the best value procurement method. Like AB 1185, AB 1358 imposes skilled workforce requirements for contracts awarded pursuant to its provisions. Under AB 1358, a company cannot be prequalified or shortlisted for a design build contract unless it “provides an enforceable commitment to the school district that the entity and its subcontractors at every tier will use a skilled and trained workforce to perform all work on the project or contract that falls within an apprenticeable occupation in the building and construction trades.”

AB 1185 and 1358 share a very strict definition of what constitutes a “skilled and trained workforce.” Under this definition, a “skilled and trained workforce” means a workforce that meets both of the following conditions:

- (1) All the workers are either skilled journeypersons or apprentices registered in an apprenticeship program approved by the Chief of the Division of Apprenticeship Standards.
- (2) As of January 1, 2016, at least 20 percent of the skilled journeypersons employed to perform work on the contract or project by the entity and each of its subcontractors at every tier are graduates of a DAS-approved California apprenticeship program or an apprenticeship program outside of California that has been approved for federal purposes pursuant to the U.S. Department of Labor regulations.

(Emphasis supplied.)

A “skilled journeyperson” is a worker who (1) has graduated from a DAS-approved California apprenticeship program or an apprenticeship program outside of California that has been approved for federal purposes; or (2) has at least as many hours of on-the-job experience in the applicable occupation as would be required to graduate from an apprenticeship program for the applicable occupation.

In each subsequent year after 2016, the percentage of skilled journeypersons in the workforce increases by an additional 10%, so that in 2020, 50% of the workforce of the contractor and each of its subcontractors (regardless of tier) must be graduates of either a DAS-approved California apprenticeship program or an apprenticeship program outside of California that has been approved for federal purposes.

Given that there are few DAS-approved nonunion apprenticeship programs, the “skilled and trained workforce” requirement effectively excludes a great many nonunion contractors and subcontractors. Even union contractors may have difficulty providing a “skilled and trained workforce” and hiring subcontractors that meet this requirement.

What You Need To Know

If you plan to bid school district design-build or best value projects, you will need to plan carefully to ensure that you and your subcontractors can qualify as having a “skilled and trained workforce.” This is particularly because you must ensure that not only do your own forces meet the skilled and trained workforce requirement, but also that all tiers of subcontractors do so as well.

In future legislative sessions, it is likely that the trade unions will seek to extend these new workforce requirements to other kinds of contracts, and not just best value contracts awarded by LAUSD or design build contracts entered into by school districts.