

SCHOOL AND COLLEGE LEGAL SERVICES *of California*

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

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

LEGAL UPDATE

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

General Counsel
Margaret M. Merchat

Attorneys
Nancy L. Klein
Marko H. Fong
Carl D. Corbin
Patrick C. Wilson
Loren W. Soukup
Frank Zotter, Jr.
Kristina T. Jansen

For For For For For
Susanne K. Reed
(1947 – 2010)

To: Superintendents/Presidents, Member Community College Districts

**From: Patrick C. Wilson, Senior Associate General Counsel
Loren W. Soukup, Assistant General Counsel**

**Subject: 2012 Construction Contract Update
Memo No. 01-2012(CC)**

Based on recent legislation, the following revisions have been incorporated into our form Construction Contract:

5% Retention

Effective for all contracts entered into on or after January 1, 2012, California Public Contract Code section 7201 requires that the retention proceeds withheld from any payment by a public entity to the original contractor shall not exceed 5% of the total contract price. However, the retention amount may exceed 5% if the governing board has made a finding, prior to the bid, that the project is “substantially complex” and therefore requires a higher retention amount and the governing board includes both this finding and the actual retention amount in the Notice Inviting Bids.

Labor Compliance Program/Compliance Monitoring Unit Program

Labor Compliance Program

Effective January 1, 2012, a Labor Compliance Program is required if a project is funded by either the Kindergarten-University Public Education Facilities Bond Act of 2002 or the Kindergarten-University Public Education Facilities Bond Act of 2004 and the contract was awarded prior to January 1, 2012; or the project is subject to a statutory requirement that calls for

a Labor Compliance Program; or the District has elected to enforce such a program and the program has been approved by the Department of Industrial Relations. If a Labor Compliance Program is required, the district must comply with Labor Code §1771.5 and §1771.7 and Title 8 of the California Code of Regulations, Subchapters 4 and 4.5.

Compliance Monitoring Unit Program

Effective January 1, 2012, a Compliance Monitoring Unit Program is required if a project will be funded in whole or in part from any bond issued by the state to fund public works projects; or the Project is subject to a statutory requirement to pay the fee to the Department of Industrial Relations for the monitoring and enforcement of prevailing wage requirements on the Project; or the District has elected to enforce such a program. If a Compliance Monitoring Unit is required, the district is obligated to comply with Division 2, Part 7, Chapter 1 of the Labor Code and Title 8 of the California Code of Regulations, Subchapters 4 and 4.5.

Bid Limit Increase

Effective January 1, 2012, the bid threshold limit for non-construction, competitively bid contracts has been increased to \$81,000. This higher bid limit only applies to (1) the purchase of equipment, materials, and supplies; (2) services, except construction services; and (3) repairs, including maintenance as defined in Public Contract Code section 20115, that are not public projects as defined in Section 22002(c). Please note that the \$15,000 threshold for construction services/public works projects has not been affected by this change.

If you would like to receive a copy of our 2012 Construction Contract or if you have any questions concerning this or any other legal matter, please contact any of the attorneys in our offices.