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**Re: 2017 California Public Contract Code Additions and Revisions; Other Relevant Amended Statutes**

Dear Colleagues:

Please take note of the following 2017 revisions to the California Public Contract Code (PCC) as a result of legislation enacted in 2016, and other related California statutes. Please review the Table of Contents for those statutes and cases that may be of greatest interest to you.

Community college and school district clients will also receive a second highlighted copy more directly pertinent to their concerns.

Previous year-end Public Contract review letters can be found on our website at [www.jaretlaw.com](http://www.jaretlaw.com). If you have any questions, or need further information, please do not hesitate to call.

Best regards for the New Year!

Sincerely,



PHILLIP A. JARET

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## **I. PUBLIC CONTRACT CODE ADDITIONS**

### **A. PCC § 2010 – Certification; Compliance with Unruh Civil Rights Act and California Fair Employment and Housing Act**

This new statute requires that anyone who submits a bid or proposal to a state agency with respect to any contract work in the amount of \$100,000 or more, is required to certify under penalty of perjury that (a) they are in compliance with the Unruh Civil Rights Act; (b) that they are in compliance with the California Fair Employment and Housing Act; (c) (1) that any policy they have against any sovereign nation, including Israel, is not used to discriminate in violation of the Unruh Civil Rights Act or the California Fair Employment and Housing Act; and (c) (2) any policy adopted or actions taken thereunder are reasonably necessary to comply with federal or state sanctions or laws and shall not be construed as unlawful discrimination in violation of either of the two aforementioned Acts.

### **B. Chapter 2.9. Skilled and Trained Workforce Requirements**

**PCC § 2600 – Application of chapter; enforceable commitment to use a skilled and trained workforce**

**PCC § 2601 – Definitions**

**PCC § 2602 – Enforceable agreement to use skilled and trained workforce; monthly report**

This new chapter of the PCC encompassing three new sections requires that when a public entity is required by statute or regulation to obtain an enforceable commitment that a bidder, contractor, or other entity will use a skilled and trained workforce to complete a contract or project, it utilizes all workers that are either skilled journeypersons or apprentices registered in an apprenticeship program. Specifically, for work performed after January 1, 2017, at least 30% of the skilled journeypersons employed are graduates of an apprenticeship program; for work performed on or after January 1, 2018, at least 40%; for work performed after January 1, 2019, at least 50%; and for work performed after January 1, 2020, at least 60%. This requires the contractors and subcontractors at every tier to employ graduates of an apprenticeship program in the percentages noted above. Furthermore, monthly reports are required to be submitted to the public agency which “shall withhold further payments until a complete report is provided.”

### **C. Chapter 9. Claims and Disputes**

**PCC § 9204 – Legislative findings and declarations regarding timely and complete payment of contractors for public works projects; claims process**

The new law applicable to most types of public entities establishes for contracts entered into on or after January 1, 2017, a claim resolution process for any claim by a contractor in connection with a public works project. It defines a claim as a separate demand by the contractor for one or

more of the following: a time extension for relief from damages or penalties for delay, payment of money or damages arising from work done pursuant to the contract, or payment of an amount disputed by the public entity.

It requires the public entity upon receipt of a claim sent by registered or certified mail, to review it and within 45 days, provide a written statement identifying the disputed and undisputed portions of the claim. It requires any payment due on an undisputed portion of the claim to be processed within 60 days. However, the claim will be deemed rejected in its entirety if the public entity fails to issue the written statement.

If the claimant disputes the public entity's written response, or if the public entity fails to respond to a claim within the described time period, a meet and confer session is required. Thereafter, any disputed portion of the claim that remains after the meet and confer conference will then be subject to nonbinding mediation. Unpaid claim amounts will accrue interest at 7% per annum. Also, there is a procedure under which all tiers of subcontractors may present a pass-through claim through the prime.

Also required is that the text of these provisions, or a summary, be set forth in the plans and specifications, so therefore appropriate language needs to be added in connection with new contracts. Note, however, that a public entity may prescribe reasonable change order, claim, and dispute resolution procedures and requirements in addition to the provisions of this section, so long as the contractual provisions do not conflict with or otherwise impair the time frames and procedures set forth in this new law.

**D. Article 60.6. Surface Storage Projects**

**PCC § 20928 – Authorization of alternate project delivery**

**PCC § 20928.1 – Project delivery methods for surface storage projects; awarding of contracts**

**PCC § 20928.2 – Procurement process for projects; scope and price documents; prequalification and short-listing; competitive bidding; best value selection method**

**PCC § 20928.3 – Identification of specific types of subcontractors to be included in proposal; process for awarding subcontracts**

**PCC § 20928.4 – Dams and reservoirs provisions.**

These new statutes, applicable to surface storage projects identified in the CALFED Bay-Delta Program Record of Decision, dated August 28, 2000 of the Water Code, authorize the following methods of project delivery: (1) Construction manager at-risk; (2) Design-Build, including conventional, progressive and target price; (3) (a) Design-build-operate; (3)(b) Contract awarded

on a best value basis or to the lowest responsible bidder. The work is required to be performed by skilled journeypersons or apprentices registered in an approved apprenticeship program with scheduled percentages from January 2017 through January 2020, starting at 30% and increasing to 60%.

## II. PUBLIC CONTRACT CODE REVISIONS

### A. PCC §§ 6971, 6972 – Alternate procurement procedures for certain transportation projects; Construction Manager/General Contractor method; Definitions

This chapter with respect to alternate procurement procedure for certain transportation projects performed by a regional transportation agency, has been expanded to include the construction of the following bridges not on the state highway system: Yerba Buena Island, West Side Bridges Seismic Retrofit Project; Yankee Jims Road Bridge Project in the County of Placerville; and the County of Placerville.

### B. PCC § 10506.4 – Bidding details of Best Value Construction Contracting Pilot Program

This pilot program for the Regents of the University of California for projects over \$1 million is now a permanent program. Pursuant to § 10506.9 it remains in effect until January 1, 2018.

### C. PCC § 20155.4 – Prequalification or shortlisting of best value contractor; commitment to use of skilled and trained workforce

This amended statute, applicable to Counties, requires that a best value contractor, in order to be prequalified or short listed, has to provide an enforceable commitment to the County that the contractor and its subcontractors at every tier will use a skilled and trained workforce, when the County has entered into a Project Labor Agreement (PLA) to use a skilled and trained workforce, and the contractor agrees to be bound by that PLA, and the project or contract is being performed under an extension or renewal of a PLA that was entered into by the County prior to January 1, 2017.

### D. PCC § 20301 – Purchases exceeding specified amount; bids; award; best value; minimum quotations; advertisement; authority to reject and readvertise; application

This amended section applicable to the Santa Clara Valley Transportation Authority, raises the threshold value from \$100,000 to \$150,000 with respect to “best value” purchases of supplies, equipment, and materials. The lower threshold limit was increased from \$2,500 to \$3,500.

### III. OTHER RELEVANT AMENDED CALIFORNIA STATUTES

#### A. **Business & Professions Code § 7031 – Unlicensed contractors prohibited from bringing or maintaining action to recover compensation in any court in state; recovery by person utilizing unlicensed contractor**

This amended statute is intended to remove some of the harshness of the existing statute which provides that a contractor performing work requiring a license: (1) may be precluded from recovering any compensation for work performed without a license; and (2) must disgorge all compensation paid for work performed. Now there will be a limited safe harbor for contractors who substantially complied with licensure requirements if certain conditions are met, including, that the contractor did not know or reasonably should not have known that it was not duly licensed at the time of performance under the contract and acted promptly in good faith to “remedy the failure to comply with the licensure requirements upon learning of the failure.” The contractor is still required to have been licensed prior to the performance of the act or contract and acted reasonably and in good faith to maintain proper licensure.

#### B. **Labor Code § 1773.1 – Employer payments included in per diem wages**

This statute has been amended to require per diem wages to include industry advancement and collective bargaining agreements administrative fees if payments are made pursuant to a collective bargaining agreement to which the employer is obligated.

#### C. **Labor Code § 1777.5 – Employment of registered apprentices; wages; standards; number; apprenticeable craft or trade; exemptions; contributions; compliance program**

This statute has been amended to require contractors on public works projects to pay apprentices prevailing wages, unless otherwise provided by a collective bargaining agreement, for time spent on pre-employment activities, including filling out applications, undergoing testing, training or examination, or other pre-employment process required as a condition of employment, including travel time to and from the required pre-employment activity.

However, unless otherwise provided by a collective bargaining agreement, a contractor is not required to compensate an apprentice for the time spent on pre-employment activities if the apprentice is required to take a pre-employment drug or alcohol test and he or she fails to pass that test.