

# SCHOOL AND COLLEGE LEGAL SERVICES of California

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

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## LEGAL UPDATE

January 6, 2012

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**To:** Superintendents, Member School Districts (K-12)

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

**Re:** 2012 Construction Contract Update  
Memo No. 01-2012

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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.