

PERALTA COMMUNITY COLLEGE DISTRICT
Board of Trustees Agenda Report
For the Trustee Meeting Date of November 10, 2009

ITEM # 14

ITEM TITLE:

Consider Approval of Amendment No. 2 to Contract for Labor Compliance Program (LCP) Services for the District with Davillier-Sloan, Inc.

SPECIFIC BOARD ACTION REQUESTED:

Approval is requested for Amendment No. 2 to the contract for with Davillier-Sloan, Inc. for Labor Compliance Program (LCP) services, at a not-to-exceed fee of \$10,000.

ITEM SUMMARY:

Under this amendment, Davillier-Sloan, Inc. will continue to work with the District and the Labor Commissioner of the State of California to resolve any and all issues related to non-compliance with Labor Code 1771.7 on the part of NBC General Contractors Corporation for work performed on any District project. These additional services were requested by the Board of Trustees in order to assure full compliance with any issues of alleged wage underpayment by NBC.

BACKGROUND/ANALYSIS:

The original contract with Davillier-Sloan, Inc. provided LCP services from July 1, 2008 through June 30, 2009 at a not-to-exceed fee of \$72,000. At the Board meeting of April 7, 2009, approval was received to continue LCP services from April 1, 2009 through June 30, 2010, at a not-to-exceed fee of \$92,250. The additional services increase the not-to-exceed fee for the current period to \$102,250.

ALTERNATIVES/OPTIONS:

Not applicable.

EVALUATION AND RECOMMENDED ACTION:

Approval is recommended for Amendment No. 2 to the contract for with Davillier-Sloan, Inc. for Labor Compliance Program (LCP) services, at a not-to-exceed fee of \$10,000.

SOURCE OF FUNDS (AND FISCAL/BUDGETARY IMPACT):

Measure A, as approved by the voters in Peralta's constituency and authorized under Resolution 05/06-45, Exhibit A-1, District-Wide Projects, "Classrooms and facilities to enhance the community outreach capabilities of the District among the numerous ethnic communities living and served by the District," and all bond projects under Measures A and E.

OTHER DEPARTMENTS IMPACTED BY THIS ACTION (E.G. INFORMATION TECHNOLOGY):

Yes _____ No X

COMMENTS:

All Board recommended contracts are subject to negotiation and execution by the Chancellor.

WHO WILL BE PRESENTING THIS ITEM AT THE BOARD MEETING?

Vice Chancellor Ikharo

DID A BOARD STANDING COMMITTEE APPROVE THE ITEM? YES _____ No X

IF "YES", PLEASE INCLUDE THAT INFORMATION IN YOUR SUMMARY.

PLEASE ACQUIRE SIGNATURES IN THIS ORDER:

DOCUMENT PREPARED BY:
Prepared by: Sadiq B. Ikharo Date: 11-4-09
Dr. Sadiq B. Ikharo
Vice Chancellor for General Services

DOCUMENT PRESENTED BY:
Sadiq B. Ikharo Date: 11-4-09
Dr. Sadiq B. Ikharo
Vice Chancellor for General Services

FINANCE DEPARTMENT REVIEW
 Finance review required Finance review *not* required
If Finance review is required, determination is: Approved Not Approved
If not approved, please give reason: _____
Signature: Thomas Smith Date: 11.5.09
Thomas Smith
Vice Chancellor for Finance and Administration

GENERAL COUNSEL (Legality and Format/adherence to Education Codes):
 Legal review required Legal review *not* required
If Legal review is required, determination is: Approved Not Approved
Signature: Thuy T. Nguyen Date: 11/5/09
Thuy T. Nguyen, General Counsel

CHANCELLOR'S OFFICE APPROVAL
 Approved, and Place on Agenda Not Approved, but Place on Agenda
Signature: Elihu Harris Date: 11/4/09
Elihu Harris, Chancellor



Labor Management Consultants

October 8, 2009

Dr. Sadiq Ikharo, Director of Physical Plant
Peralta Community College District
333 East 8th Street
Oakland, CA 94606

RE: Proposed Change Order/Contract Modification

Labor Compliance Program Services Purchase Order Number 3000040457

Dear Dr. Ikharo:

Davillier Sloan, Inc. (DSI) requests a contract change/modification to the existing contract for Labor Compliance Program (LCP) services to be provided to the Peralta Community College District (District) through June 30, 2010, in accordance with Labor Code 1771.7 for state funded projects.

In addition to the services identified in the existing contract (see attachment), DSI will continue to work with the District and the Labor Commissioner of the State of California to resolve any and all issues related to non compliance with Labor Code 1771.7 on the part of NBC General Contractors (NBC) for work performed on any District projects. These additional services were requested by the board in order to assure full compliance with any issues of alleged wage underpayments by NBC.

DSI proposes to provide these LCP services for a fee not to exceed \$102,250, which reflects an increase of \$10,000 over the existing contract amount. This amount will not be exceeded without prior, written approval.

Please let us know if there are any additional steps need to be taken to extend our contract. We are prepared to meet with you and your staff to discuss our proposal in more detail, if need be.

Sincerely,

Jake Sloan,
President

ATTACHMENT A
PROPOSED METHOD TO IMPLEMENT
LABOR COMPLIANCE PROGRAM

DSI proposes to implement a Department of Industrial Relations (DIR) approved Labor Compliance Program (LCP). With such a program in place, this proposed approach assumes certain and close working relationships between DSI, the District staff and any other applicable District consultants. DSI's philosophy for labor compliance administration is pro-active and attempts to identify potential problems before they arise and address them quickly when they arise. DSI fully believes educating contractors early in the process will reduce delays, miscommunication and misunderstanding, resulting in projects completing with full labor compliance. All services will be provided on an as needed basis, as follows:

Apprentice Labor Force Analysis In order to determine the capacity for reaching the apprenticeship hiring requirements as dictated by Labor Code 1777.5, a survey of all available apprentices for the areas capable of working on the District's projects will be conducted.

Review Project Manuals & Bid Documents Before the project manuals are completed DSI will review them to confirm that the appropriate LCP language is included and that wage rates are referenced in the documents. DSI can suggest language for contracts with subcontractors that will hold them responsible for labor compliance. Additionally, if desired, DSI can provide language for District's contract whereby the contractor is responsible for costs that the District incurs as a result of a contractor's noncompliance.

Bid Advertisements When a project is advertised, DSI will note and record the bid advertisement date, which determines the prevailing wage determination that will cover the project.

Pre-Bid Meetings It is essential that DSI attends the pre-bid meetings. At pre-bid meetings, the labor compliance requirements will be presented to contractors in attendance. The contractors will be informed of reporting requirements. The project manager will be informed of the need for careful, daily documentation of worksite activities and, in particular, the types of work, work activities and the composition of the workforce.

Bids Received When bids are received, the project manager will submit a copy to DSI. The bid documents, especially the listing of subcontractors, will become the basis for the establishment of a preliminary project filing system.

Pre-Construction Meetings It is essential that DSI attends the pre-construction meetings. At pre-construction meetings, the contractors will be given the details of all reporting and compliance requirements, along with reviewing the packet of forms that must be completed for compliance. The contractor will be required to sign a pre-job checklist agreeing that they have been informed of all requirements of the program.

Notice To Proceed When a contractor is given a Notice to Proceed, the project manager or resident engineer must notify DSI. The contractor's information will be entered into a database created for monitoring the workforce. This database will be maintained and available throughout the life of the project.

Monitoring Certified Payrolls

- Contractor's Information Form

Upon receiving the Notice to Award, a Contractors Information Packet will be sent to the general contractor with request that all subcontractors complete and return it within ten (10) working days. This packet will simplify the prevailing wage requirements and inform the contractor of all the forms that are required to be in compliance. This packet will be reviewed with the contractor at the pre-construction meeting.

- Logging of Certified Payrolls

As payrolls are received, they will be date stamped and logged into a computerized program.

- Review of Certified Payrolls

After logging the information, each certified payroll will be reviewed for compliance with the Department of Industrial Relations (DIR) wage scales for journeymen and apprentices. In addition to the wage scales, upon receipt of the initial certified payroll, DSI will confirm that the contractor has submitted all of the required forms, such as but not limited to the fringe benefit statement and the contractor information form

All subsequent certified payrolls will be monitored for compliance with the prevailing wage scales, utilization of apprentices and related Labor Codes.

- Audit of Certified Payrolls

Once a month, or as needed, a thorough audit of the certified payrolls will be conducted. During the audit, the certified payrolls will be analyzed and will be compared to a source document such as site visit information, off site worker interviews.

- Timely Submittal Check

A weekly review will be conducted to determine if all contractors are submitting certified payroll documents. Any contractors more than three (3) weeks in arrears on document submittals will be notified in writing with a copy to the District's project manager or project inspector. If subcontractors are repeatedly late in submittals, DSI will request District delay progress payments until truancy is resolved.

- Potential Violations

If incorrect wages or other problems on the certified payroll are identified, the contractor and District project manager will be notified in writing. The contractor will be required to respond within ten (10) working days. If the contractor does not respond within the given timeframe, DSI will recommend to the District that estimated underpayments be withheld until the response is received, reviewed and approved.

If the contractor response indicates that there is still a discrepancy the project manager will be notified in writing to stop all estimated underpayments until the issue has been resolved.

- Contractor Response to Potential Violation

When the contractor response has been received, DSI will review the submittal to make a preliminary determination of whether any violation has occurred.

- Correction of Potential Violation

If the contractor response resolves the questions of potential violation(s), the project manager will be informed in writing. All documentation is then filed. The file remains active until the project has been completed and final payment is made.

- Payments to Workers

If it is determined that there has been an underpayment to a worker, the contractor will be notified with a request for payment to the worker. The project manager or resident engineer will be requested to withhold the estimated underpayment from progress payments or retention until the contractor has submitted documentation of full payment.

- Dispute Resolution

If a dispute cannot be resolved by DSI, the issue will be referred to DIR or the District's Legal Counsel, as directed.

- Compliance

All Labor Compliance Program related documents that are reviewed and determined to be in compliance with the regulations will be filed and remain active for three (3) years after the project is completed. Copies will be available upon written request.

- Noncompliance

If noncompliance on the certified payroll is discovered while conducting a review or audit, the noncompliance is separated into major and minor violations. In both cases the District will be sent all correspondence initiated to the contractor or to DIR.

Minor violations do not require DIR participation and include issues such as delinquent or incomplete certified payroll. These violations are resolved quickly by notifying the contractor in writing to correct the problem. Major violations will include DIR involvement, for example, violations involving penalty assessment, withholding of monies or willful violations such as consistently delinquent certified payroll submittal, underpayment of the prevailing wage, or apparent falsification of the certified payroll. The contractor is notified in writing to correct the problem and that penalties will be assessed if no response is received within the given time period.

Contractors who do not correct major violations within the given time period will have penalties assessed and progress payments withheld or delayed. DSI will request approval for forfeitures from DIR for penalties and withhold the payments on behalf of the District and then serve the contractor with the Notice of Withholding Contract Payments. Most major violations are resolved prior to a Notice of Withholding Contract Payment Hearing, but in the few cases where a hearing is required, DSI will appear on behalf of District to pursue the violation.

Any monies successfully withheld from the contractor or collected, as penalties from the contractor, shall be distributed into the appropriate funds as directed.

If a major violation is unresolved, all related documents remain active for a period of five (5) years after the project is complete.

Site Visits Site visits will be conducted on a regular basis and observations recorded. Additional site visits may be conducted during a violation investigation to collect any additional information or evidence. Inspector's daily logs may also be reviewed.

Applications for Payment When applications for payment are made, the project manager must confirm with DSI if the contractor is compliant with the program before release of progress payments.

Monthly Reports/Invoices All activities and documentation related to this process will become part of the monthly reports prepared by DSI and submitted to the participating District with the monthly invoice.

- The contractor non-compliance report is submitted directly to the District project manager, detailing which subcontractor are in compliance with the program.

Storage Unless the District desires otherwise, all files will be stored at the offices of DSI for a period of three (3) years after project completion. Major violation files are stored for a period of five (5) years after project completion. All documents are maintained as public record and are therefore produced within ten (10) days from the initial written request. Documents requested directly by the District are produced immediately for convenience and no longer than twenty-four (24) hours after the request is made. Storage costs are not included in monthly fee and can be negotiated at program's completion.

Fee Schedule

If selected, DSI would propose to provide LCP administration services on an hourly basis for a total cost not-to-exceed Ninety Two Thousand Two Hundred and Fifty dollars (\$92,250) per year without prior, written approval.

Principals	\$202.59	per hour
Associates	\$133.13 - \$144.70	per hour
Support	\$ 75.24	per hour