

CLIENT NEWS BRIEF

New Statutes Affect Local Agency Public Works Projects

New legislation will impact public works projects for local public agencies, including cities, school districts, and counties. In light of these changes, public agencies will want to closely review their public works bidding and construction documents to ensure they are updated in accordance with these new laws.

Liquidated Damages – Government Code section 53069.85 currently allows liquidated damage provisions in local agency public works contracts to compensate the owner for costs caused by contractor delay in lieu of actual delay damages. Most public works contracts include a liquidated damages clause, which typically states a dollar amount that will be assessed for each day of delay. The dollar amount is calculated by the public agency before entering the contract based on estimated actual delay damages and the likely inconvenience to the public of any delay. If no liquidated damages provision is included in a contract, the owner would still be able to recover actual delay damages incurred.

Effective January 1, 2016, Public Contract Code (PCC) section 7203, added by Assembly Bill (AB) 552, will require liquidated damages provisions in every local agency public works contract, and recovery of actual delay damages will be barred. The legislation also restricts the owner from charging liquidated damages after the filing of a notice of completion or, in the absence of such notice, the public agency's acceptance of the public work as complete.

Prevailing Wages – For public works projects awarded on or after July 1, 2016, Labor Code section 1720.9 (created by AB 219) adds hauling and delivery of ready-mixed concrete to the definition of "public works" for purposes of prevailing wages. "Hauling and delivery" means the duties of the ready mixer driver, including the return trip to the factory or plant.

Prequalification and Lease-Leaseback (school districts only) – For details about AB 566 that affects mandatory prequalification and lease-leaseback projects as of January 1, 2016, please see [Client News Brief No. 51, September 2015](#), on the Lozano Smith website.

If you have questions regarding the implications of AB 1358, or have any planned or anticipated construction projects and would like to discuss construction delivery methods, please contact one of our [nine offices](#) located statewide. You can also visit our [website](#), follow us on [Facebook](#) or [Twitter](#), or download our [Client News Brief App](#).

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