



Mark Your Calendars



July 14th – River Cats Family Outing

September 1st – APMC has a new office on Kilgore in Rancho Cordova

September TBA – APMC Membership Meeting, Sacramento Windustrial

September 21st – Joint Seminar with SMACNA, NorCal MCA and NECA – Critical Trends Driving the Construction Industry & Strategic Repositioning After the “Great Recession”

CLC UPDATE

CLC Co-Sponsored “Type 1” Indemnification Reform Legislation Moves Out of Final Policy Committee

Tuesday, the Assembly Judiciary Committee voted to approve SB 474, the CLC co-sponsored legislation to reform the use of “Type 1” indemnification contract clauses on commercial construction projects. The bill is strongly opposed by CEA and AGC, as they wish to continue the unfair practice of forcing subcontractors to provide a defense for the active negligence of the general contractors. We were able to secure the votes to pass the bill out of the committee based on the injustice the bill corrects.

The next step for the bill is an Assembly floor vote. We are doing everything in our power to make “Type 1” indemnification reform a reality this year.

State Budget Passed

This week the California State legislature approved a new 2011-12 state budget. The budget closes the \$9.6 billion deficit the state was facing. The plan did not contain the Governor’s proposed five year extension of the 2009 temporary tax increases scheduled to expire June 30, 2011, but rather relies on \$4 billion in anticipated revenue. If that revenue fails to come in, another round of cuts would be required midyear. The budget plan was passed by the Democratic majority on a party line vote and delays any public vote on tax increases until next year. The good news is that the budget has been deemed “balanced” and will allow the state to issue the bonds needed to finance previously authorized public works projects statewide.

The approval of this budget plan means that there will be no special election in 2011, and that any initiative to increase taxes would be placed on the November 2012 general election ballot by petition rather than by a 2/3rds vote of the Legislature.

The new budget includes a set of “trigger reductions” that will cut spending if revenues are not expected to reach anticipated levels. If the funding falls short, the state will automatically implement mid-year cuts of more than \$2.5 billion in State general fund spending (The bulk, \$1.9 billion, would come from K-12 education.).

The new budget also eliminates Redevelopment Agencies (RDAs) effective October 1, 2011 unless cities or counties elect to participate in an Alternative Voluntary Redevelopment Program (AVRP). AVRP participants would have to make “community remittances” payments to help fund schools, fire protection, and transit services. In 2011-12, community remittances would total \$1.7 billion, the vast majority of which (\$1.696 billion) would be directed to school districts within redevelopment areas and would count toward the state’s Proposition 98 funding guarantee. The remaining \$4 million would be directed to fire and transit districts within redevelopment areas in 2011-12. In 2012-13 and subsequent years, community remittances would total \$400 million per year, of which \$340 million would be directed to schools. However, these funds would augment existing school funding and not count toward the Proposition 98 guarantee.

Finally the 2011-2012 budget agreement establishes a framework to shift primary responsibility for a number of public safety and related services, along with a dedicated source of funding, to counties beginning in 2011-12. Counties would assume responsibility for \$5.6 billion in program costs in 2011-2012, rising to a projected \$6.8 billion in 2014-15. These costs would be funded primarily by transferring revenues from an existing 1.0625 percent state sales tax rate to counties, which is estimated to provide \$5.1 billion in 2011-12.

In addition, the budget agreement redirects \$453 million in existing vehicle license fee (VLF) revenues to fund local costs in 2011-12. Under the portion of the realignment plan enacted in April, counties would assume responsibility for certain low-level felons, adult parolees, and juvenile offenders effective October 1, 2011. This transfer is expected to allow the state to comply with a federal court order, recently affirmed by the US Supreme Court, to reduce the state’s prison population by more than 30,000 inmates over the next two years.

The budget agreement shifts responsibility for a number of additional programs to counties in 2011-12, including child welfare services, mental health services, substance abuse treatment, and adult protective services. However, those programs “will continue with minimal changes until additional 2011 realignment legislation can be enacted later this legislative session,” according to the Senate Budget and Fiscal Review Committee.

Lost & Found

Found after the golf tournament -- One pair prescription glasses with bronze wire rims and one pair of non-prescription sunglasses with black wire rims and very dark lenses. Contact the APMC office.

Copier for Sale

Konica Minolta BizHub C250

Five year old copier with lots of copy life left in it needs a new worksite. Current meter count is 108K. Service and maintenance records available. Reasonably priced. You pick-up. Contact the APMC office for specs and more information.

Public Contract Code Bid Violations

By: Sam K. Abdulaziz & Bruce D. Rudman, Abdulaziz, Grossbart & Rudman

The Regents of the University of California solicited bids for mechanical, electrical and plumbing work for a project that included the design and possible construction of the UCSF Medical Center at Mission Bay. There were six bid packages in all and bidders were to submit prequalification materials, a best value questionnaire, a lump sum preconstruction bid, and an option percentage fee for future construction. The idea was that the final evaluation of the best value contractor was to be done in a manner that prevented the cost or price information from being revealed to the committee evaluating the qualifications of the bidders to make sure the process was fair.

All of the bids received were rejected because The Regents of the University of California felt that it was in the best interest of UCSF to conduct a rebid. The amended bidding was only open to those that bid in the first round of bids and the bidders could only bid on the projects that they had bid on during that first round. In addition, there were alternative packages to bid on which were combination packages that combined a few of the six projects together.

University representatives selected the bid packages, awarding Southland Industries the subcontract based on the alternate package. Schram Construction, Inc. (SCI), who was one of the bidders, petitioned for a writ of mandate compelling the University to award it a contract, contending the University did not comply with the competitive bidding requirements governing the award of a public contract. The trial court denied the petition, and SCI appealed.

The appellate court reversed the case and remanded it with instructions that a Writ of Mandate should be issued rescinding the contract issued to Southland and putting the project out for bid. The reasoning is that when the University relies on a best value method to award contracts (the bidders offering the best

combination of price and qualification), *Public Contract Code* Section 10506.4(c) requires the University to adopt and publish procedures and required criteria that ensure that all selections are conducted in a fair and impartial manner that is known to all bidders. This did not happen with the University in that it failed to inform prospective bidders of the primary criteria it relied on in selecting the winning bid package, or how the alternative and individual bid packages would be compared in considering the bids. This lack of information was said to have caused SCI to bid in a different manner, to its detriment.

In short, in order not to violate the Public Contract Code, it is imperative for the public entity obtaining the bids to completely outline the procedure and criteria of the bid and selection process so that the same can be conducted in a fair and impartial manner. If this is not done, the contract can be rescinded, or bids thrown out, so the bidding procedures protect the public.

Sam Abdulaziz has been practicing construction law for over 35 years, and is considered one of the premiere experts in construction law, including California contracting license laws. He is the author of "California Construction Law." Bruce Rudman has been practicing construction law for 15 years. He has garnered a great reputation in the construction field not only as a litigator but on licensing issues with the CSLB, particularly disciplinary proceedings. Abdulaziz, Grossbart & Rudman provides this information as a service to its friends & clients and it does not establish an attorney-client relationship with the reader. This document is of a general nature and is not a substitute for legal advice. Since laws change frequently, contact an attorney before using this information. Bruce Rudman and Sam Abdulaziz can be reached at Abdulaziz, Grossbart & Rudman: (818) 760-2000 or by E-Mail at bdn@agrlaw.com, or at www.agrlaw.com May/June 2011

Join us on September 21st!

APMC, SMACNA, NECA and NorCal MCA present an FMI Seminar...

STRATEGIC APPROACHES TO CONSTRUCTION INDUSTRY TRENDS

The construction industry is in a unique position. There are indications of a possible rebound, but few managers would say this rebound has "arrived". The purpose of this program is to offer the most current view of the construction market and to identify strategies that respond to the highly competitive marketplace. The course is built around an interactive exploration of the following questions:

- Where is the construction market in the economic cycle?
- What are the critical trends that will drive the recovery?
- What strategies are companies executing successfully in this environment?
- What are the most successful companies doing that is different?
- What are strategic responses to a revenue limited, low profit margin market?
- What's NEXT? What challenges will follow on to the construction recession during a recovery?

As part of the program, a survey of membership will be conducted this summer and the specific needs of the group will be addressed.

Target Audience: CEOs, Presidents, Vice Presidents, Senior Executives, Company Owners, VP Operations, CFOs, Business Managers and Business Agents.. No prerequisites.

Watch your inbox and mail for more details.



**APMC Invites you to
Family Night with the River Cats!
Thursday, July 14, 2011
Gates open at 6:00 p.m.**

Join us at Raley Field in the Party Suite for this annual event.

The Cats will be playing the Fresno Grizzlies. Game tickets, food and beverages are included.

Limited to four (4) tickets per member company.

*If you are interested in more than 4 tickets, please indicate how many here _____.
If additional tickets are available, we'll notify you based on the date your original ticket request was received.*

Company: _____ **Contact:** _____

Phone: _____ **Email:** _____

1. _____ 2. _____

3. _____ 4. _____

Tickets will be mailed prior to the event.

RSVP to: claired@sacvalleyassoc.net or fax to: 916-567-6638