

## DEPARTMENT OF INDUSTRIAL RELATIONS

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December 29, 2008

Harris & Associates, Inc.  
120 Mason Circle  
Concord, CA 94520  
Attn.: Dana LeSher and Bakari Akil

Re: Reapplication for Approval of Labor Compliance Program,  
ID No. 2003.00157

Dear Mr. LeSher and Mr. Akil:

This notice is being provided under Title 8, California Code of Regulations, section 16426(b) with respect to the reapplication for approval of Harris & Associates' labor compliance program. Please be advised that the Director of Industrial Relations is unwilling to approve the application at this time in light of a number of concerns as outlined below.

Annual Reports: Harris & Associates has been consistently late in submitting its annual reports, as required under section 16431 of the regulations, and it was the failure to file reports that resulted in the non-extension of Harris's approval. Mr. Akil attributed this year's delinquency to the departure of Roland Williams; however, our records show that Mr. Akil himself has seen signing and submitting Harris's reports since at least 2006. The failure to file timely reports, which is required by regulation and should be a fairly routine task, suggests an inattention to legal requirements and to detail that is inconsistent with the monitoring and enforcement responsibilities of LCPs. We need to know what measures have been taken to assure that timely and accurate reports will be submitted in the future, notwithstanding any changes in personnel.

Adequacy of Staffing: We are concerned that Harris does not have adequate staff to effectively monitor and enforce labor compliance for the large numbers of projects and awarding bodies identified in Harris's application and annual reports, particularly in light of the minimum mandatory performance standards that are part of the regulatory amendments that will go into effect on January 19, 2009, and the performance quality concerns mentioned below. We further note that three of the eight identified labor compliance officers have very little direct enforcement experience.

Enforcement Manual: Comparing the current manual to the one submitted with the original application in 2003, we noted the following:

1. Under Program Implementation of Intro, there is language where monthly CPR for the project is to be *spot-checked* for accuracy. This was not in the original manual, is unclear as

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to meaning, and may not comply with the review and confirmation requirements that will be incorporated into section 16432 of the regulations as of next month.

2. Section V – Certified Payroll Records Review A1, states that the *prime contractor shall be responsible for the review and submission* of copies of CPR of all its subcontractors, which is erroneous insofar as it suggests that an LCP's monitoring tasks can be delegated to the prime contractor.
3. Section V – Certified Payroll Records Review A2, states that payroll documentation must include identifying information for workers "contributing *materially* to the project." The quoted phrase is not drawn from state prevailing wage law and may be applied in a way that improperly limits enforcement responsibilities.
4. Under Section VII Enforcement Action C2c, lists penalties under LC 1777.5 which is not under the jurisdiction of LCP. Instead, apprenticeship violations that may incur penalties under section 1777.5 must be referred to the Division of Apprenticeship Standards.
5. Under Section VII Enforcement Action D & E, some responsibilities of the LCP are shown instead as responsibilities of the awarding body.
6. Under Section VII Enforcement Action E5, the Labor Commissioner's approval, modification or disapproval of the proposed forfeiture shall be served within **30 days** not 20.
7. Section IX Enforcement Action Appeals A does not include language stating that when the contractor/subcontractor fails to file an appeal within 60 days, the Notice of Withholding of Contract Payments becomes final.
8. The forms to be used during enforcement (Notice of Withholding of Contract Payments, Opportunity to Review Evidence, etc.) are not attached or mentioned in the manual.

Besides these specific items, we noted that the manual has not been updated to reflect the requirements of the regulatory amendments that will go into effect on January 19, 2009. Because those amendments have now been approved and will be mandated for all programs within a few weeks, you will need to make the necessary updates as part of your manual revision. (See new subsection (f) of section 16426 of the regulations.)

Legal Support: We are not familiar with the firm of Hopkins & Carley and do not know what experience they have, if any, in prevailing wage enforcement. Since we have no record of any formal enforcement cases being pursued by Harris since its LCP was approved in 2003, we are concerned that Harris may either lack access to appropriate legal support for that specific task or may be unwilling to use it. Appropriate support includes the ability to address the particular issues that arise under California's prevailing wage law and to successfully defend enforcement appeals under Labor Code section 1742 within the short time frames provided by that statute and in accordance with prevailing wage hearing regulations at 8 Cal.Code Reg. sections 17201 - 17270.

Enforcement Record: Harris's annual reports indicate that it has been monitoring in the range of one-half to one billion dollars in public works construction contracts annually, making Harris one of the largest LCPs in the state by that measure. However, Harris has reported only small amounts of wage and penalty recoveries, and the Division of Labor Standards Enforce-

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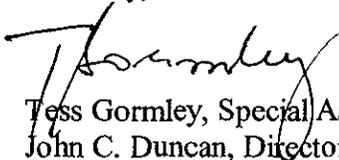
ment has no record of Harris ever requesting approval of forfeiture in accordance with the requirements of section 16437 of the regulations (and specified in Harris' enforcement manual). While possibly this may reflect exceptionally good and proactive monitoring efforts, it is not consistent with the level of enforcement activity reported by older more experienced programs. Moreover, recent paperwork submitted by Harris to the Division of Labor Standards Enforcement, specifically a set of Notices of Withholding of Contract Payments dated November 18, 2008, suggest a lack of familiarity with the approval of forfeiture process, since section 16437 requires that the Division's approval be obtained *before* penalties are assessed and formal Notices of Withholding of Contract Payments issued pursuant to Labor Code section 1771.6.

Communications: We are aware that Weinberg, Roger & Rosenfeld recently complained to the Division of Labor Standards Enforcement about Harris's enforcement on a specific project, and we have seen Harris's letter to the Division in response to that complaint. We do not know the particulars of the dispute. However, the excerpting of a broadly stated two-line phrase from the Carpenters' multi-page scope of work provisions – language which in isolation could embrace nearly any type of construction work – does not reflect a thoughtful analysis or approach toward the technical and sometimes difficult issues that face labor compliance regulators. We are also concerned over what Harris communicated to awarding bodies with respect to the limited extension of its initial approval. Although Harris's initial approval had already expired on October 1, a limited extension was provided for purposes of facilitating an orderly transfer of responsibilities to other programs; and it was not reasonable for Harris to assume or communicate to awarding body any assurances about Harris's reacquisition of approved status.

My November 24, 2008 letter to Harris stated, among other things, that any new application must include demonstrable evidence of Harris's capacity and willingness to pursue enforcement measures that go beyond voluntary wage recoveries. The above areas of concern must be addressed and Harris must provide evidence of its "capacity and ability to operate an effective Labor Compliance Program consistent with applicable legal requirements" before its application can be approved. Because the regulatory amendments will go into effect in three weeks and will govern program operations thereafter, any new or revised or application materials should be consistent with the new regulatory provisions.

If you have any questions concerning this notice you may direct them to the undersigned at (415) 703-5063 or to legal counsel John Cumming at (415) 703-4265.

Sincerely,



Tess Gormley, Special Assistant for  
John C. Duncan, Director of Industrial Relations

cc: [see page following]

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cc: John Cumming, Counsel, Office of the Director, Legal Unit  
Susan Nakagama, Regional Manager, Division of Labor Standards Enforcement  
Office of Public School Construction  
Colton Joint USD  
Lynwood USD  
Oroville UHSD  
Sanger USD  
Ackerman SD  
Adelanto ESD  
Barstow CCD  
Butte-Glenn CCD  
Cabrillo CCD  
Central USD  
City of Bakersfield Redevelopment Agency  
Eureka Union ESD  
Fairfield-Suisun USD  
Fresno COE  
Glendale CCD  
Grant JUSD  
Hesperia USD  
Kings Canyon USD  
Kingsburg Elementary Charter SD  
Konocti USD  
Laton USD  
Loomis USD  
Marysville JUSD  
Napa County DPW  
North Monterey County USD  
Placer COE  
San Bernardino CSS  
Snowline JUSD  
Tulare JUSD  
West Kern CCD  
Willow Creek Community Services

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bcc: Mark Woo-Sam