

## DEPARTMENT OF INDUSTRIAL RELATIONS

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February 26, 2009

Harris & Associates, Inc.  
120 Mason Circle  
Concord, CA 94520

Attn: Bakari Akil, Dana LeSher, and Mario Maciel

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

Dear Messrs. Akil, LeSher and Maciel:

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 that was submitted on January 9, 2009. In light of evidence showing that Harris & Associates and its personnel do not have the requisite ability to operate an effective Labor Compliance Program consistent with applicable legal requirements, I am denying the application.

The determination has been made with particular reference to the copies of Notices of Withholding of Contract Payments that your company (hereinafter "Harris") started forwarding to the Division of Labor Standards Enforcement (DLSE) last fall. Harris has provided DLSE with copies of fifty or more such Notices of Withholding, each representing that it was issued "[i]n accordance with Labor Code sections 1771.5 and 1771.6". However, DLSE advises me that it has never received a Request for Approval of Forfeiture from Harris at any time, even though sections 16435.5 through 16437 of the regulations require LCPs to obtain the Division's approval before assessing statutory penalties and issuing a formal Notices of Withholding of Contract Payments pursuant to Labor Code section 1771.6. This problem was called specifically to your attention in the previous denial letter sent by Ms. Gormley on January 2, 2009, yet Harris apparently has continued issuing these notices without the required review and approval by DLSE.

Regarding the contents of the forwarded Notices, I note that a majority assess statutory penalties that appear to be far in excess of the maximum penalties allowed under Labor Code sections 1775 and 1813. For example, a Notice dated February 2, 2009, that was issued to prime contractor Mark Nicholson, Inc. and subcontractor Jeffrey Concrete Inc. for work performed on the Cabrillo Arts Education Classrooms, assessed a total of \$312.68 in back wages plus an additional \$28,900.00 in penalties under Labor Code sections 1775 and 1813, which is over \$90 in penalties for each dollar of back wages assessed. Since section 1775 authorizes a maximum \$50 penalty for each distinct violation (underpaid worker per day), and section 1813 authorizes an additional \$25 penalty if the violation involves an underpayment of overtime, the \$312.68 in wages would have to encompass hundreds of distinct violations in order to generate nearly \$29,000 in penalties, even if every

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violation involved overtime and was assessed at the maximum rate. Another Notice assessed \$7.37 in back wages and \$106,800.00 in penalties, which is an impossibility, even if every penny in back wages represented a distinct overtime violation assessed at the absolute maximum rate. If Harris had presented these penalty assessments to DLSE for approval, as it was required to do under sections 16435.5 through 16437 of the regulations and Labor Code section 1775, DLSE almost certainly would not have approved the forfeitures in many if not most of the forwarded Notices.

Another problem noted in our review of these Notices is that Harris began including DLSE's contact information in the right hand box at the top of the form. LCP's have never been instructed or authorized to display DLSE contact information on that part of the form, which gives the erroneous impression that DLSE participated in issuing the form.

We further note that Harris recently started using the new Notice of Temporary Withholding of Contract Payments due to Delinquent or Inadequate CPRs form that was developed for use when withholding payments under Labor Code section 1771.5(b)(5) and section 16435 of the regulations. Harris' forms also include DLSE's contact information in the upper right hand box, which is improper not only for the reasons stated above but also because DLSE has no involvement in this type of withholding, as the regulation indicates. It also appears from some of these notices that Harris is using this withholding authority to obtain other documents besides certified payroll records, which is not authorized by the relevant statute or regulation.

Aside from the serious concerns raised by these notices, a review of your program's updated LCP Manual (Exhibit 2 to Reapplication submitted on January 9, 2009) indicates that it does not provide adequate nor completely accurate guidance on labor compliance monitoring and enforcement. The manual includes erroneous regulatory and statutory citations; it uses headings that do not match of the contents of specific sections (see for example Section VII.C.); it says nothing about the format for certified payroll reporting, other than mentioning the new requirements for electronic reporting; in Section V.C., entitled "Audit Process," it sets forth verbatim the language of section 16432(e) of the regulations, but the Manual says nothing about how program personnel will go about the investigation of claims leading up to an audit; there is no mention of "confirmation" or site visit responsibilities; there is no clear explanation of the process of requesting approval of a forfeiture; there are no specific procedures set forth for the withholding of contract payments; and there are no forms or attachments included with the manual. In many places the Manual just restates regulatory language; and overall it does not provide much useful guidance for how a labor compliance officer should go about performing his or her work.

Harris was first approved as an LCP in 2003, and early on received specific instructions from DLSE staff on the process of requesting approval of forfeitures. However, Harris has never requested approval of forfeiture, notwithstanding the high volume of LCP work (measured in terms of the dollar value of projects monitored) that Harris has contracted to perform. In an effort to show this department Harris' commitment to labor compliance enforcement, you began forwarding copies of Notices of Withholding to DLSE last fall. However, rather than instilling us with more

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confidence in Harris' ability and willingness to enforce prevailing wage requirements, the forwarding of these forms instead has demonstrated Harris' lack of awareness as to how an LCP is required to interact with DLSE as well as what appears to be a fundamental misunderstanding of an LCP's authority to assess statutory penalties. Because this information has been provided by Harris' highest level compliance officer, Mr. Akil, and in light of the deficiencies in Harris' LCP manual as well as previously expressed concerns regarding the limited size and experience of program staff, I do not have confidence that the requisite knowledge and ability to operate an effective LCP presently exists within your company. Consequently, I will be unwilling to consider any further reapplications from Harris at this time.

The latest amendment to Harris' application submitted on February 25, 2009, does not change this determination. Mr. LaSher has been listed as a Vice President with oversight over Harris' labor compliance program for several years, and thus designating him as the principal Labor Compliance Officer is not a meaningful change from our perspective. Only one of the deficiencies in the LCP Manual that are noted above has been corrected, and that one correction does not change the overall conclusion that this is not an adequate resource tool.

Sincerely,



John C. Duncan  
Director

cc: Tess Gormley, special Assistant to the Director  
John Cumming, Counsel, Office of the Director, Legal Unit  
Susan Nakagama, Regional Manager, Division of Labor Standards Enforcement  
Office of Public School Construction  
Awarding Bodies listed on prior letters

Colton Unified School District  
1212 Valencia Dr  
Colton, Ca 92324  
ATTN: Alice Grundman

Fairfield-Suisun Unified School District  
1975 Pennsylvania Avenue  
Fairfield, Ca 94533

Marysville Joint Unified School District  
1919 B Street  
Marysville, Ca. 95901  
ATTN: Victor Lopez

Lynwood Unified School District  
11321 Bullis Rd  
Lynwood, Ca 90262-3600  
ATTN: Ramon Roxas

Fresno County Office of Education  
1111 Van Ness Ave  
Fresno, Ca 93721  
ATTN: Jeff Becker

Napa County Department of Public Works  
1195 Third St, Rm 201  
Napa CA 94559  
ATTN: Janet Walker

Sanger Unified School District  
1905 Seventh Street,  
Sanger, Ca 93657  
ATTN: Richard Sepulveda

Glendale Community College District  
1122 E Garfield Ave  
Glendale, CA 91205  
ATTN: William Taylor

North Monterey County Unified School District  
8142 Moss Landing Rd  
Moss Landing, Ca 95039  
ATTN: John Dominguez

Ackerman Unified School District  
13777 Bowman Road  
Auburn, CA 95603  
ATTN: Marilyn Gilbert

Grant Joint Unified School District  
1333 Grand Avenue  
Sacramento, Ca 95838  
ATTN: Larry Branum

Placer County Office of Education  
360 Nevada Street  
Auburn , Ca 95603  
ATTN: Laura Batisse

Adelanto Elementary School District  
11824 Air Expressway  
Adelanto, California 92301  
ATTN: Natalee Price

Hesperia Unified School District  
15576 Main St  
Hesperia, Ca 92345  
ATTN: Diana Gott

San Bernardino County Superintendent of Schools

601 North E Street

San Bernardino, California 92410

ATTN: David Reck

Kings Canyon Unified School District

675 W. Manning

Reedley CA 93654

ATTN: Terri Bechtel

Butte Glenn Community College District

3536 Butte Campus Dr

Oroville, Ca 95965-8399

ATTN: Kimberly Jones

Tulare Joint Unified School District

426 N Blackstone St

Tulare, CA 93274

ATTN: Luke Smith

Konocti Unified School District

9430 Lake Street

Lower Lake, Ca 95457

ATTN: Cliff Lantz

City of Bakersfield Redevelopment Agency

1600 Truxtun Avenue, Ste 300

Bakersfield, CA 93301

ATTN: Donna Kunz

Willow Creek Community Services

P.O. Box 556

Salyer, Ca 95563

ATTN: Josh McKnight/Danny Walsh

Barstow Community College District

2700 Barstow Rd

Barstow, CA 92311

ATTN: Charles Mitchell

Snowline Joint Unified School District

4075 Nielson Rd

Phelan Ca, 92371

ATTN: Ray Coco

Kingsburg Elementary Charter School District

1310 Stroud Avenue

Kingsburg, Ca 93631

ATTN: Mark Ford

Cabrillo Community College District

6500 Soquel Dr

Aptos, Ca 95003

ATTN: Douglas Deaver

West Kern Community College District

29 Emmons Park Drive,

Taft, CA 93268

ATTN: Michael Capela

Laton Unified School District

P.O. Box 248

Laton, CA 93242

ATTN: Ralph Vandro

Eureka Union Elementary School District

5455 Eureka Rd

Granite Bay, Ca. 95746

Loomis Unified School District

3290 Humphrey Rd

Loomis CA 95650

ATTN: Jay Stewart

Central Unified School District

4605 N. Polk

Fresno, CA 93722

Kingsburg Joint Union High School District

1900 18th Ave

Kingsburg, CA 93631

Oroville Union High School District

2211 Washington Ave.

Oroville, CA 95966

ATTN: Susan Watts