STATE OF CALIFORNIA Arnold Schwarzenegger, *Governor*

DEPARTMENT OF INDUSTRIAL RELATIONS
Office of the Director
455 Golden Gate Avenue, 10th Floor
San Francisco, CA 94102
Tel: (415) 703-5050 Fax: (415) 703-5058

MAILING ADDRESS:
P. O. Box 420603
San Francisco, CA 94142-0603

February 25, 2010

Labor Compliance Services Co.
2412 W. Monterey Place
Burbank, California 91506

Attn.: Kim Flynn, Owner

RE: Application for Approval of Labor Compliance Program
LCP ID No. 2009.00639

Dear Ms. Flynn:

In accordance with the provisions of Title 8, California Code of Regulations; section 16426(b), the application for approval of Labor Compliance Services Co.'s labor compliance program is hereby denied. This action is based on the program's failure to establish its ability and capacity to operate an effective labor compliance program in accordance with applicable legal requirements. In particular, the program's manual remains inadequate in that recent regulatory amendments have been incorporated verbatim without providing guidance or reflecting any understanding of how those requirements are to be implemented.

Assuming that you intend to revise the manual and resubmit your application, there is one other area we would like you to address. Your application identifies Jay Rothman as the program's legal counsel, and the introductory section of the Program Manual states that "Legal counsel for the LCP or awarding agency shall prepare a response to a Request for Review should a contractor or subcontractor opt to not pay the amount in the Notice to Withhold Contract Payments, and no settlement agreement was subsequently obtained." We are not aware of Mr. Rothman's training and experience in the specific area of prevailing wage enforcement, and we are unclear with respect to how you intend to use his services and whether you may also rely on unnamed awarding agency counsel. Our expectation is that an LCP will rely upon its own legal counsel to answer public works coverage and enforcement questions and handle any appeal following the issuance of a Notice of Withholding of Contract Payments pursuant to Labor Code Section 1771.6. Counsel should be familiar with prevailing wage law and with the procedures governing appeals under Labor Code Section 1742 and the prevailing wage hearing regulations at Title 8, California Code of Regulations; sections 17201 – 17270. The LCP is expected to follow the Labor Commissioner's practice of being represented by an attorney in such proceedings (8 Cal.Code Reg. §16434(a)) and should be aware that a pattern of mishandling enforcement actions could lead to revocation of approval under section 16428(a)(3) of the regulations.

We would also like to call your attention to the current rulemaking proceeding to amend existing LCP regulations and adopt new regulations to implement the recent SBX2-9 legislation. Once these proposals become effective, they may significantly limit the manner in which awarding bodies may use third party LCPs to enforce state prevailing wage requirements. For additional information about these proposals, please visit our website at www.dir.ca.gov/lcp.asp.

If you have any questions about this determination, please contact Victor Osorio, Program Analyst at 415-703-5054.

Sincerely,

Nance Steffen, Special Assistant
to the Director of Industrial Relations

cc: Regional Manager, Division of Labor Standards Enforcement