

# Public Works & Public Contracting

## Public Works

Public agencies are authorized to procure services necessary to construct facilities for the benefit of the public which include buildings, streets, sewers, storm drains, and many other kinds of public works. In order to undertake and complete public works projects, the California Public Contract Code sets forth a rigid set of rules that are designed to obtain the greatest benefit for the public. While many public works projects are straightforward and run smoothly, others can be very complicated and have the potential for disputes with contractors and subcontractors. The Public Contract Code requires public bidding, and that process is subject to a complex set of rules governing selection of the successful contractor and ensuring proper use and treatment of subcontractors.

In addition to the Public Contract Code's rigorous procurement process, public works projects are also subject to comprehensive California Labor Code requirements, which, among other things, require payment of prevailing wages, maintenance of payroll records and bonding of contractors. Navigating the comprehensive rules governing procurement of contractors, administering construction projects, resolving contractor disputes, as well as dealing with bid protests and subcontractor claims that arise all too often, and ensuring compliance with the Labor Code requirements, necessitates having guidance by attorneys experienced in all aspects of delivery of public works projects. Attorneys at RWG have many years of experience in assisting public agencies with their public works projects--from the conceptual stage through successful project completion, including resolution of any disputes and claims.

## Public Contracting

Public agencies are generally empowered to do all things necessary to operate as a public agency, which includes the power to procure goods and services. As with private entities, public agencies are subject to State contracting laws, but with the additional obligation to ensure that the means of procurement of goods and services will obtain the greatest benefit for the public. This obligation takes into account not only price and quality of goods and services, but ensuring that the public is afforded the greatest protection from financial loss in the course of that procurement.

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## RELATED PRACTICES

Municipal & Public Agency Law

Services provided by consultants and other contractors on a public agency's property have the potential for causing injury or financial loss for which the agency may be held responsible. Therefore, in contracting for such services, it is critical that contracts are drafted and/or reviewed by attorneys having experience in allocating risk to such consultants or contractors through appropriate indemnification provisions and further ensuring financial responsibility to back up such indemnities with comprehensive insurance requirements. Whether a consultant or contractor will be performing for a week or a year, or the contract is minimal or substantial in amount, when performance of the services occurs on the agency's property, there will always be the risk of injury or loss and resulting damages for which the agency might be responsible in the absence of appropriate contract terms written by an attorney experienced in drafting such contracts.

In addition to the various risks to public health and safety that can be presented by onsite activities of a contractor or consultant, understanding the nuances of the industry providing the needed goods or services is also a critical factor in public contracting. Having become fairly commonplace, public agencies routinely obtain all kinds of software services via the internet, necessitating an exchange of financial, personal or other sensitive data with private companies. That exchange of data, including cloud-based storage of such data, is susceptible to unauthorized access, which, in some cases, can result in identity and/or other kinds of data theft and unauthorized intrusions. Such breaches of security can require unanticipated expenditures by a responsible agency in order to mitigate the damage caused by such intrusion, or loss or compromising of sensitive data. While most software service providers will not indemnify public agencies against such losses, careful negotiation can compel such providers to agree to comply with industry standards concerning data security and to agree to provide remedial measures in the event of unauthorized access.

Ensuring that software services are being provided at an agreed-upon level of performance is another facet of procurement of online software services by public agencies that requires particular skill. Every software service provider maintains a certain service level, i.e., the level of availability on any day of the online service. However, getting such a provider to agree to maintain a certain service level, and to provide a credit to the agency for periods when the service is unavailable, is usually a term of a software service agreement that must be requested and then negotiated. Understanding the nuances of contracting for online software services is critical to ensuring that an agency's expectations are met. Having the assistance of an attorney experienced in this area of public contracting can significantly improve the level and quality of service to be obtained by the public. Attorneys at RWG have received specialized training and have the experience necessary to maximize a public agency's benefit in using online software services.

Most every aspect of public contracting has the potential for financial loss, but also for obtaining substantial public benefit. RWG attorneys have a substantial depth of experience in every kind of public contracting. Engaging any one of the Firm's contract attorneys will serve to better ensure that your agency's risks will be minimized and the greatest benefit will be obtained.

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## NEWS

Governor Vetos 5G Wireless Expansion Bill

*Los Angeles Times, 10.16.2017*