

CALTRANS ARBITRATION PROCESS UPHELD AS CONSTITUTIONAL.

The California Court of Appeals recently held that the arbitrator selection process for California Department of Transportation projects is constitutional. *Coffman Specialties, Inc. v. California Department of Transportation* (2009) 176 Cal.App.4th 1135.

As many public works contractors are aware, the State Contract Act governs specified public works projects which exceed a certain cost. *Public Contract Code (P.C.C.) §10105*. The Act mandates that once a bid is accepted and the parties enter into a contract, the remedy for the resolution of claims arising from the contract “shall be arbitration” under relevant statutory provisions. *P.C.C. §10240*. The arbitration process is administered by the Office of Administrative Hearings (OAH), and by a committee composed of industry and governmental representatives, known as the Public Works Contract Arbitration Committee. *P.C.C. §§10245 – 10245.4; California Code of Regulations, title 1, §1310*.

The Public Works Contract Arbitration Committee certifies arbitrators with experience in large-scale public construction matters to preside over statutory public works arbitration hearings, and maintains a list of those certified arbitrators. The State Contract Act and implementing regulations provide detailed procedures which are followed by the parties when selecting an arbitrator from the list of certified arbitrators. *P.C.C. §10240.3; California Code of Regulations, title 1, §1321*.

Once an arbitrator is selected, the arbitrator is subject to numerous disclosure obligations which either party may utilize to request that the arbitrator be disqualified. *California Code of Regulations, title 1, §1322*. An arbitrator’s failure to disclose is a basis for vacating the arbitration award after it is issued. *P.C.C. §10240.12; California Code of Civil Procedure §1286.2(a)(6); Guseinov v. Burns* (2006) 145 Cal.App.4th 944, 957.

Coffman Specialties, Inc. (Coffman) is an engineering contractor who brought a declaratory relief action against the California Department of Transportation (Caltrans) when Caltrans refused Coffman’s request to select an arbitrator from a source other than the list of certified arbitrators maintained by the Public Works Arbitration Committee. Coffman’s declaratory relief action sought a declaration from the Court to the effect that the arbitration provisions of the State Contract Act were unconstitutional because they violated Coffman’s constitutional rights to a neutral arbitrator. *P.C.C. §10240 et. seq.*

Coffman’s main argument was that the process was unconstitutional because it created a financial bias in the arbitrator to favor Caltrans because of Caltrans’ “repeat customer” status in the arbitrations. In summary, the Court of Appeals reasoned that the sufficient safeguards were present to preserve fairness. Specifically, the Court focused on the arbitrators’ disclosure obligations coupled with the right of any party to reject an arbitrator based on the disclosures. One of those disclosure obligations requires that the arbitrator selected disclose whether he/she has presided over a Caltrans public works arbitration within the past five (5) years. *Judicial*

Council's Ethics Standards for Neutral Arbitrators in Contractual Arbitration, Standard 7(d)(4)(B). The Court also noted that an arbitration award could be vacated based on an arbitrator's failure to disclose material information.

The Court then reasoned that if a contractor learns that an arbitrator has consistently ruled in favor of Caltrans, then that contractor will have the opportunity to disqualify the arbitrator. As such, the Court found Coffman's position unpersuasive based on the reasoning that an arbitrator who wishes to be selected for future arbitrations would in fact benefit from ruling in a fair and impartial manner instead of favoring Caltrans.