



# City of Los Angeles



# Department of Public Works

## Public Works Infrastructure Stabilization Policy

## Department of Public Works

### RESOLUTION NO. \_\_\_\_\_

#### RESOLUTION ADOPTING A POLICY REGARDING PUBLIC WORKS INFRASTRUCTURE STABLIZATION

**WHEREAS**, the Department of Public Works continues to lead the way to advance, achieve and maintain the City's vital infrastructure facilities, resources and services through its Capital Improvement Program (CIP) that serve over four million residents covering a geographic area of 465 square miles; and

**WHEREAS**, the Department of Public Works is responsible for the engineering, design and construction of municipal facilities affecting the public right of way and public properties as well as the maintenance and repair of the City's streets, street lighting systems, medians, embankments, roadways and bridges that provide safety for pedestrians, vehicles and the safe flow of goods and services throughout the City; and

**WHEREAS**, the Department of Public Works is responsible for the collection, treatment, disposal and recycling of sewage, urban runoff, refuse and household hazardous waste; and

**WHEREAS**, the Department of Public Works protects the City and public interest by ensuring that all public works projects are constructed and administered in accordance with the plans, specifications, contract provisions, and necessary safety provisions in the project sites; and

**WHEREAS**, the successful completion of covered projects is also of utmost importance to the Department of Public Works and the general public in the City and as such the Project Labor Agreement will facilitate the prompt, safe and on-time delivery of projects within the Department of Public Works' CIP; and

**WHEREAS**, the work to be done will require maximum cooperation from the many parties who will be involved to mitigate the negative impact to the public right of way, minimize the disruptions to City residents that affect quality of life and ensure timely completion of public work projects; and

**WHEREAS**, it is recognized that projects of a certain magnitude with multiple contractors and bargaining units on the job site at the same time over an extended period of time create the potential for work disruption without an overriding commitment to maintain continuity of work; and

**WHEREAS**, the interests of the general public, the City, the unions, contractors, subcontractors, employers and workers will be best served when construction work proceeds in an orderly manner free of disruption caused by strikes, sympathy strikes, work stoppages, picketing, lockouts, slowdowns or other interferences; and

**WHEREAS**, the PLA will provide a pool of skilled craft workers to help ensure the delivery of quality and safe projects; and

**WHEREAS**, the Department of Public Works (DPW) has adopted a departmental Project Labor Agreement (PLA) which will provide construction employment and training opportunities in ways calculated to mitigate the harms caused by geographically concentrated poverty, unemployment and underemployment in concentrated poverty neighborhoods; and

**WHEREAS**, employment of City residents in high unemployment and/or Concentrated Poverty Neighborhood areas affects the City as a whole and positively impacts the social wellbeing of residents and to that end, the City has taken action to promote those residents receiving employment opportunities at City public work projects; and

**WHEREAS**, increasing access to employment opportunities with prevailing wages is one way for the City to directly combat poverty and stimulate economic reinvestment; and

**WHEREAS**, the DPW-PLA is not intended to have an adverse impact on the policy of the City to maximize business opportunities for minority, women and other business enterprises in City contracts; and

**WHEREAS**, the DPW-PLA reflects a commitment by all parties to the diversity in the workforce hiring that reflect levels of minority, women and other worker utilization at levels which are representative of the relevant workforce of these groups in the Greater Los Angeles Area as determined by the U.S. Census Bureau; and

**WHEREAS**, the DPW-PLA will help advance the skills of the local labor pool, especially the youth, by maximizing opportunities to be indentured into federal- and/or state-certified joint labor/management apprenticeship programs; and

**WHEREAS**, the Department of Public Works through the PLA, seeks to create career opportunities through apprenticeship participation, retention, and graduation; and

**WHEREAS**, the Board of Public Works wishes to adopt a policy to promote the above objectives and protect the proprietary interests described above.

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF PUBLIC WORKS OF THE CITY OF LOS ANGELES, CALIFORNIA,**

**AS FOLLOWS:**

**The Department of Public Works (DPW) adopts the following Public Works Infrastructure Stabilization Policy:**

**SECTION I. DEFINITIONS**

1. “Apprentice” means any worker who is indentured in a bona fide Labor/Management construction apprenticeship program, registered and approved by the State of California Department of Industrial Relations, Division of Apprenticeship Standards (DAS) or in the case of Projects with federal funding, indentured in a bona fide Labor/Management apprenticeship program approved by the US Department of Labor (DOL) and California DAS.

2. “Apprenticeship Program” means any Labor/Management construction apprenticeship program certified and approved by the California DAS or in the case of Projects with federal funding, approved by the US Department of Labor (DOL) and California DAS.
3. “Area Median Income” (AMI) means the area median income for the Los Angeles – Long Beach Metropolitan Statistical Area, as determined annually by the U.S. Department of Housing and Urban Development.
4. “Awarding Authority” means any agency or authority of the City, or any employee or officer of the City that is authorized to award or enter into any contract on behalf of the City.
5. “Board” means the City of Los Angeles Board of Public Works.
6. “Bureau of Contract Administration (BCA)” means the designated bureau within the City’s DPW responsible for administering the PLA and this Policy.
7. “City” means the City of Los Angeles, a municipal corporation, and all City Awarding Authorities.
8. “Concentrated Poverty Neighborhood” means a census tract in which 40% or more of the households have incomes below the federal poverty guidelines.
9. “Construction Contract” means a City contract which has been certified by the City Controller, awarded by the Board, and is necessary to complete the DPW Project.
10. “Contractor/Subcontractor/Employer (C/S/E)” means any individual firm, partnership, owner operator, or corporation, or combination thereof, including joint ventures, which is an independent business enterprise and which has entered into a contract with the DPW or any of its contractors or subcontractors/owner operators of any tier, with respect to the construction of any part of a Covered Project.
11. “Core Worker” means a verifiable member of a C/S/E’s core workforce for the purpose of the DPW-PLA and this Policy if the worker’s name appears on the C/S/E’s active payroll for 60 of 100 working days prior to award of the construction contract and meets all standards required by applicable local, state or federal law or regulation.
12. “Covered Project(s) or Project” means a project or projects which have been included within the Five-Year Public Infrastructure Program Series (PIPS) and covered by the DPW-PLA or so designated by the Board. The Board may identify additional projects that are appropriate for coverage in accord with Section 2.1.
13. “Craft Request Form” means the document through which a C/S/E shall request workers from the Union and/or Jobs Coordinator, in the form set forth in the DPW-PLA and/or Policy.
14. “Disadvantaged Worker” means any individual whose primary place of residence is within the City of Los Angeles and who prior to commencing work on a Covered Project, has been certified by the Jobs Coordinator as either (a) having a household income less than 50% of the AMI, or (b) facing one of the following barriers to employment: being

homeless; receiving public assistance; lacking a GED or high school diploma; having a history of involvement with the justice system; being a single parent; or suffering from chronic unemployment or underemployment.

15. “DPW-PLA” means the Project Labor Agreement entered into between the Department of Public Works and Unions, applicable to Covered Projects.
16. “Employment Hiring Plan” (EHP) means a C/S/E’s detailed hiring plan in achieving the targeted hiring percentages as described in Article 7 of the DPW-PLA and Policy.
17. “Engineer” means the City Engineer or his/her authorized representative.
18. “FHWA Project” means a DPW Project that is funded in whole or in part by the Federal Highway Administration (FHWA).
19. “Five-Year Public Infrastructure Program Series List” (PIPS) means all projects contained in the adopted PIPS (Attachment E of the DPW-PLA) that will operate under the DPW-PLA.
20. “Jobs Coordinator” means the Prime Contractor’s designated person, agent or agency that will facilitate the local hire referral process with the C/S/E, Unions and other referral organizations.
21. “LA/OCBTC” (Trades Council) means the Los Angeles /Orange Counties Building and Construction Trades Council.
22. “Letter of Assent” means the document that each C/S/E (of any tier) must sign and submit to the City’s Inspector of Public Works, which formally binds them to adherence to all the forms, requirements and conditions of the DPW-PLA and Policy.
23. “Liquidated Damages” means disputed funds withheld from the Prime Contractor until they are found to be in compliance, the contract is terminated, or the Covered Project is completed.
24. “Local Resident” means an individual whose primary residence is within Tier 1 or 2 zip code areas. The following are acceptable forms of proof of residency: (i) Copy of a current residential lease with the eligible household member’s name listed on it; or (ii) Valid driver’s license or State ID card with a City of Los Angeles address; or (iii) Medical card with current address; or (iv) Utility bill with eligible household member’s name on it; or (v) Voter’s registration card; or (vi) Other proof of residence address deemed acceptable by BCA.
25. “Policy” means the DPW Public Works Infrastructure Stabilization Policy.
26. “Project Work” means construction work performed as part of a Covered Project.
27. “Prime Contractor” means any individual firm, partnership, owner-operator, or corporation, or combination thereof, including joint-ventures, that is an independent business enterprise and that has entered into a Construction Contract.

28. “Reporting Period” means the BCA’s indicated reporting period for measuring the targeted hiring efforts of the C/S/Es’. These reporting periods shall be at the BCA’s determination of 10%, 30%, 50%, 70% and 90% construction completion phases.
29. “Tier 1” means the zip codes within the City, identified in Article 7.4 of the DPW-PLA, in which the rate of unemployment is in excess of 200% of the County of Los Angeles unemployment rate at the time of application or containing all or part of a Concentrated Poverty Neighborhood.
30. “Tier 2” means zip codes within the City, identified in Article 7.5 of the DPW-PLA, where the rate of unemployment is in excess of 100% of the County of Los Angeles unemployment rate at the time of application.
31. “Underemployment” means a situation in which a worker (i) is employed only part-time when one needs and desires full-time employment, and/or (ii) is inadequately employed at a low-paying job that requires less skill or training than one possesses.
32. “Unemployment” means, in accordance with the Bureau of Labor Statistics definition, a situation in which a person does not have a job, has actively looked for work in the prior 4 weeks, and is currently available for work and chronic Unemployment means unemployment lasting 27 weeks or longer.
33. “Union(s)” or “Signatory Unions” means the Los Angeles/Orange Counties Building and Construction Trades Council affiliated with the Building & Construction Trades Department (AFL/CIO) Craft International Unions or any other craft labor organization signatory to the DPW-PLA, acting in their own behalf and on behalf of their respective affiliates and member organizations whose names are subscribed in the DPW-PLA and who have through their officers executed the DPW-PLA.

## **SECTION II. COVERAGE OF PROJECTS**

1. Covered Projects: Except as provided otherwise herein, this Policy applies to all projects contained in the Five-Year Public Infrastructure Programs Series List, awarded by the Board, and covered by the DPW-PLA. The Board may designate additional projects for coverage under the Policy and DPW-PLA based on specific findings that coverage will advance the City’s legitimate proprietary and policy interests and promote the public interest in assuring completion of the project in question in a safe and cost-effective manner while minimizing or negating any adverse impact to the public welfare.
2. FHWA Projects: In the event that DPW determines that a project to which this Policy applies is an FHWA project, DPW shall modify or not enforce any aspect of the Policy or DPW-PLA in accordance with a valid and binding instruction from the U.S. Department of Transportation.

### **SECTION III. IMPLEMENTATION**

Prior to bid, DPW staff shall review each Covered Project's bid specifications to ensure the following provisions are incorporated:

1. That the Request for Bid Package Authorization from the Board specifies that the Covered Project contains the DPW-PLA and Policy;
2. That the Bid specifications require all contractors submitting bids or proposals agree to the terms of the DPW-PLA and Policy;
3. That a provision exists in the prime contract obligating the Prime Contractor and all its C/S/Es (of any tier) to comply with the terms of the DPW-PLA and Policy and require compliance with the DPW-PLA and Policy terms through a Letter of Assent or any other form or legally enforceable obligation to the City.
4. That the Construction Contract shall include provisions establishing liquidated damages amounts as described in Section VIII of this Policy.

### **SECTION IV. EXCLUSIONS AND/OR MODIFICATIONS**

1. Funding Source: this Policy shall not apply to DPW construction contracts or projects, if the funding source has established provisions or rules that forbid the inclusion of a PLA and/or Local Hire provision. If the project is listed as part of the PIPS, DPW staff must present the reason(s) to the Board prior to final determination to exclude the Covered Project.
2. This Policy shall not apply to work performed by a C/S/E's executives, managerial employees, engineering employees, supervisors (except those covered by State or Federal Prevailing Wage rates and/or Schedule A collective bargaining agreements), office and clerical employees, or any other employee not performing construction craftwork.
3. Out-of-State Workers: hours worked by residents of states other than California shall not be included in calculation of total hours of project work for purposes of determining compliance with the Section 5 below.

### **SECTION V. TARGETED HIRING**

1. Requirements for Covered Projects:

The Prime Contractor shall ensure that the following targeted hiring requirements are met for each Covered Project:

- a) At least 30% of total hours worked on each project shall be performed by Local Residents. For any hour of Project Work for which a C/S/E seeks to meet this 30% requirement, the C/S/E, Unions and the Jobs Coordinator must first refer individuals whose primary place of residence is within a Tier 1 zip code. After Unions, C/S/Es and the Jobs Coordinator have exhausted the available pool of Local Residents whose primary place of residence is within a Tier 1 zip code,

they may refer Local Residents whose primary place of residence is within a Tier 2 zip code.

- b) At least 20% of total hours worked on each project shall be performed by apprentices, but the hours performed by apprentices in each individual craft shall not exceed the ratio to journey person established by the applicable craft union's State DAS approved apprenticeship standards. A minimum of 50% of all apprentice hours shall be performed by Local Residents.
- c) At least 10% of total hours worked on each project shall be performed by Disadvantaged Workers residing within Tier 1 or Tier 2 zip code areas described in Articles 7.4 and 7.5 of the DPW-PLA respectively and the remaining zip codes within the City of Los Angeles. Hours of project work performed by Disadvantaged Workers may be applied towards the 30% Local Resident requirement of the DPW-PLA and/or this Policy.

## **SECTION VI. RESPONSIBILITIES OF BCA, C/S/Es, UNIONS, and JOBS COORDINATOR**

### 1. BCA Responsibilities:

- a) Monitor and enforce the targeted hiring measures of the DPW-PLA and Policy and issue Notices of Non-Compliance where appropriate.
- b) Review, approve or disapprove submitted Employment Hiring Plans prior to a C/S/E(s)' estimated start of work. Approval of a C/S/E to work on a Covered Project is contingent on the C/S/E(s)' submittal of an approved EHP plan.
- c) Ensure, prior to a C/S/E's approval to work on a Covered Project, its submittal of a duly signed Letter of Assent.
- d) Post local hire status reports on the BCA website (<http://bca.lacity.org>) for Covered Projects.
- e) Report to the Board on a quarterly basis the status of all Covered Projects.
- f) Determine any withholding from payments as disputed funds and make recommendations for assessment of Liquidated Damages.

### 2. Prime Contractor and C/S/Es:

- a) Employment Hiring Plan (EHP): Prime Contractor shall ensure that its C/S/Es (of any tier), at least 20 business days prior to starting their work on the Covered Project, shall submit their plan(s) to the BCA for approval by the BCA Director or his/her designee. Each C/S/E shall include in its EHP a description of how it will meet the targeted hiring requirements set forth in the DPW-PLA and Policy. No C/S/E (of any tier) shall be approved to work on a Covered Project without an approved EHP.

- b) PLA and Policy: Prime Contractor shall ensure that its C/S/Es (of any tier), prior to start of work, (i) read and understand the requirements of the DPW-PLA and Policy; (ii) submit their Employment Hiring Plans at least 20 business days prior to their subcontractors' start of work and (iii) sign and submit their Letters of Assent prior to start of work. No C/S/E (of any tier) shall be approved to work on a Covered Project without having submitted a signed Letter of Assent.
- c) Prior to start of work on the project, the Prime Contractor shall:
- Recommend a Jobs Coordinator for approval by the BCA.
  - Upon BCA's approval of its Jobs Coordinator, notify its subcontractors (of any tier) who the Jobs Coordinator is.
  - Provide within 10-calendar days upon request by the BCA or its designated representative, documentation of their Jobs Coordinator's qualifications.
- d) The Prime Contractor and its C/S/Es (of any tier) shall coordinate with the Jobs Coordinator for services to support their efforts in meeting the targeted hiring percentages as described in Article 7 of the DPW-PLA and the Policy.
- e) Pre-Job Conference: The Prime Contractor and its C/S/Es (of any tier), prior to start of work, shall hold a pre-job conference. The purpose of the pre-job conference is to determine craft personnel needs, schedule of work for the contract and all other matters as described in the DPW-PLA and the Policy. All work assignments shall be disclosed by the Prime Contractor and/or C/S/Es (of any tier) at the pre-job conference. Any formal jurisdictional dispute(s) raised under Article 14 of the DPW-PLA must be raised at the pre-job conference upon disclosure of the work assignments. If the Prime Contractor and/or C/S/Es intend to change the work assignment after the pre-job conference or to make an assignment of work not previously known, the Prime Contractor and/or C/S/Es must notify the appropriate affected craft union(s) prior to the commencement of work.
- f) Craft Request Form: The Prime Contractor and its C/S/Es (of any tier) shall only use the Craft Request Form (Attachment "C" of the DPW-PLA) and the procedures written therein to request workers from the affected Union(s). All C/S/Es must transmit a concurrent Craft Request transmittal of such request to the Jobs Coordinator.
- g) The Prime Contractor and its C/S/Es (of any tier) must satisfactorily document their contact with the Jobs Coordinator when the Unions have not been able to refer a Local Resident and/or Disadvantaged Worker within the 24-hour window of referral.
- h) The Prime Contractor and its C/S/Es (of any tier) shall maintain proof of transmittal of the Craft Request forms to the Union hiring halls and Jobs Coordinator. Upon request by the BCA or its designated representative, copies shall be provided within 10-calendar days of request.

- i) The Prime Contractor and its C/S/Es (of any tier) shall make available to the BCA or its designated representatives records and information that are deemed relevant to monitoring and enforcement of the provisions of the DPW-PLA and the Policy.
- j) The Prime Contractor and its C/S/Es (of any tier) shall cooperate fully and promptly with any inquiry or investigation the BCA or its designated representatives deem necessary in order to monitor compliance with the provisions of the DPW-PLA and the Policy.
- k) The Prime Contractor and its C/S/Es (of any tier), within 60 calendar days after concluding work on the Covered Project, shall submit to the BCA a verified statement of the number of journeypersons and apprentices who worked on the project, their classifications and the hours worked. (Per California Labor Code 1777.5(e).)

**Upon request of the BCA or its designated representatives, the Prime Contractor and its C/S/Es (of any tier) must provide documentation of their Local Resident, Apprentice and Disadvantaged Workers targeted hiring participation level efforts within 10-calendar days of the request for documentation.**

3. Union Responsibilities:

- a) Ensure that its dispatchers properly adhere to the use of the Craft Request Form and the procedures written therein.
- b) Refer Local Residents and/or Disadvantaged Workers requested through the Craft Request Form, regardless of their place on the hiring hall list and normal referral procedures.
- c) Exert their best efforts to recruit and identify Local Residents residing in Tier 1, and then Tier 2 zip code areas, as well as those referred by the Jobs Coordinator for entrance, indentureship into a union apprenticeship program, and assisting such individuals in graduating into eligible journeypersons.
- d) Upon receiving a request from a C/S/E for a Local Resident, exhaust the available list of individuals residing the Tier 1 zip codes before referring an individual residing in the Tier 2 zip codes.
- e) Track retention of Local Residents and/or Disadvantaged Worker apprentices participating in joint Labor/Management apprenticeship programs and provide BCA with the necessary information as requested.

4. Jobs Coordinator:

- a) Criteria for Selecting a Jobs Coordinator: The Jobs Coordinator plays an integral part in the success of its partners in obtaining the targeted hiring percentages. It is the responsibility of the Prime Contractor to designate a Jobs Coordinator possessing, but not limited to, the following demonstrable experience and qualifications:

- i. Developing, creating, designing and marketing specific programs targeting Local Residents and/or Disadvantaged Workers for construction opportunities at the Covered Project (e.g. handouts and fliers for “walk-ins” demonstrating program entrance procedures).
  - ii. Coordinating services for contractors to assist in their local worker, disadvantaged worker and apprentice utilization.
  - iii. Educating and assisting contractors on incentives provided by State or federal programs for On-the-Job Training and employer tax credits.
  - iv. Conducting orientations, job fairs and community outreach meetings to the local community.
  - v. Providing supportive services such as skills training, child care, transportation, education remediation, assistance with union fees and tools.
  - vi. Screening and certifying the disadvantaged status of workers.
  - vii. Establishing a referral and retention tracking mechanism for placed local and/or disadvantaged workers and apprentices.
  - viii. Networking with the various Work Source Centers, community and faith based organizations and other non-profit entities that provide qualified local workers and/or disadvantaged workers.
  - ix. Liaising with the various building trades crafts for referral and placement of local hire and/or disadvantaged workers.
- b) **Jobs Coordinator Responsibilities.** The Jobs Coordinator shall:
- i. Coordinate the local hire referral process with the C/S/Es, Unions, City Work Source Centers, Faith and Community Based Organizations, and other organizations that can provide qualified local hire referrals.
  - ii. Certify the Disadvantaged Worker’s status.
  - iii. Maintain a database of pre-qualified local residents for referral to work on a Covered Project and/or indentureship into a bona fide Labor/Management apprenticeship program.
  - iv. Facilitate relationships among approved apprenticeship programs and the C/S/Es’ to enable prompt referral.
  - v. Be the point of contact to provide information about available job opportunities on Covered Projects.
  - vi. Educate and provide financial incentives information to the C/S/Es’ who hire eligible workers under Work Opportunity Tax Credit (WOTC) and

On-the-Job Training (OJT) and other benefits for which a C/S/E may be eligible based on their implementation of the Local Hire requirements.

- vii. Assist the C/S/Es' with their local hire effort documentations and other reports as it relates to their Local Resident and/or Disadvantaged Worker targeted hiring requirements.
- viii. Work closely with BCA staff, the building trades and C/S/Es in achieving the targeted hiring.

**Parties with responsibilities under the DPW-PLA and/or Policy, shall maintain those responsibilities regardless of the performance of the Jobs Coordinator at the tasks described in the DPW-PLA and the Policy.**

## **SECTION VII. COMPLIANCE**

The BCA or its authorized representatives shall determine whether a Prime Contractor and its C/S/Es have complied with the requirements of the DPW-PLA and the Policy. The Prime Contractor is ultimately responsible for it and its C/S/Es (of any tier) compliance with the DPW-PLA and Policy requirements.

1. If, after taking into account all hours of project work performed up to that point in time of the Reporting Period, the targeted hiring requirements of the DPW-PLA and Policy have been satisfied for a Covered Project, then the Prime Contractor and its subcontractors (of any tier) working on that Covered Project shall be deemed to be in compliance.
2. If the targeted hiring requirements of the DPW-PLA and the Policy have not been satisfied for a Covered Project, the Prime Contractor nonetheless may be deemed to be in compliance if it demonstrates both (a) that it and each of its C/S/Es (of any tier) have complied with all other requirements of the DPW-PLA and the Policy, and (b) that it and each C/S/E (of any tier) have either (i) satisfied the targeted hiring requirements of the DPW-PLA and this Policy with regard to the project work that it has performed or (ii) satisfactorily demonstrated the following:
  - a) Adherence to procedures contained in its Employment Hiring Plan as approved by the BCA.
  - b) Requests to Unions, through Craft Request Forms, of sufficient numbers of Local Residents and Disadvantaged Workers to meet the targeted hiring percentages set forth in Section 5 of the Policy for that C/S/E's Project Work.
  - c) Documented contact with the Jobs Coordinator in each instance when the relevant Union did not refer qualified Local Residents or Disadvantaged Workers within the 24 hours following the C/S/E's request and the C/S/E's fair consideration of any Local Resident or Disadvantaged Worker subsequently referred by the Jobs Coordinator.
  - d) Accurate records documenting the C/S/E's compliance efforts that include (but not limited to):

- i. A listing by name and address of all local recruitment sources contacted by the C/S/E;
- ii. The date of the local recruitment contact and the identity of the person contacted, the trade and classification and number of hire referrals requested;
- iii. The number of Local Residents and/or Disadvantaged Workers hires made as a result of the contact;
- iv. The identity and address of the worker(s) hired pursuant to the contact;
- v. Documentation when a referral was not hired (reason for non-hire) and/or premature termination.

### **SECTION VIII. ENFORCEMENT**

The Prime Contractor for every Covered Project agrees:

1. To be liable to the City for Liquidated Damages as provided in this section;
2. That the Prime Contractor and its C/S/Es (of any tier) commitment to comply with the targeted hiring requirements of DPW-PLA and Policy is a material element of the Covered Project;
3. That the failure of the Prime Contractor and its C/S/Es (of any tier) to comply with the targeted hiring requirements will cause harm to the City and the public which is significant and substantial but extremely difficult to quantify. The harm to the City includes the difficult-to-quantify harm that the community and its families suffer as a result of high unemployment and concentrated poverty;
4. Liquidated Damages: Due to the difficulty of estimation of damages for violation(s) of requirements of this Policy, Construction Contracts shall have provisions establishing liquidated damage to be assessed as follows:
  - a) The Prime Contractor shall pay liquidated damages equal to the average journeyman project wage for each hour the Covered Project fell short of the targeted hiring, or \$500 per day, whichever is greater.
  - b) If the Covered Project's targeted hiring requirements are out of compliance during any Reporting Period, the Prime Contractor shall meet with the BCA to develop a plan for compliance. The Prime Contractor has until the next Reporting Period to effectuate compliance or Liquidated Damages shall be withheld.
  - c) Before Liquidated Damages are sought, the Prime Contractor shall be notified of the proposed Liquidated Damages and served with a summary of the information upon which the Liquidated Damages are based.
  - d) Liquidated Damages shall be withheld from all subsequent monthly progress payment request(s) as disputed funds until such time as Prime Contractor is found

to be in compliance, the Covered Project contract is terminated, or the Covered Project is completed.

- e) Should the Covered Project be terminated or completed before the Prime Contractor is found to be in compliance, recommendation shall be made to the Board to assess Liquidated Damages and the amount of the Liquidated Damages shall be returned to the fund from whence they came.

5. Liquidated Damages Appeal:

- a) The Prime Contractor may appeal the assessment of Liquidated Damages before the Board. Prior to the Board hearing to address assessment of Liquidated Damages, the Prime Contractor shall be provided a summary of the information upon which the recommendation assessment is based.
- b) The Prime Contractor must request an appeal in writing within 10-calendar days of receipt of the Liquidated Damages assessment summary. At the Board hearing to determine assessment of Liquidated Damages, the Prime Contractor will be allowed to provide evidence that it has made all of the showings required under Section 7 of the Policy. Failure to submit a written request for an appeal within the time frame stipulated in this Section will be deemed a waiver of the right to appeal and the recommendation for assessment of Liquidated Damages will be implemented.

- 6. Termination of Contract(s): Consistent, substantial violations of the DPW-PLA and/or Policy by any Prime Contractor and/or C/S/E may result in a recommendation to the Board that the contract of the offending Prime Contractor and/or C/S/E be terminated per Section 00405 of the Master General Conditions.

**SECTION IX. APPLICABLE LAW AND SEVERABILITY**

The provisions of this Policy shall not be applicable where prohibited by federal or state law, or where the application would violate or be inconsistent with the terms and conditions of a grant or a contract with an agency of the United States or the State of California, or the valid instructions of an authorized representative of any of these agencies with respect to any grant or contract. If enforcement of any provision of this Policy is enjoined by a court of competent jurisdiction, the remaining provisions shall remain in full force and effect.