

**CITY OF OAKLAND
COUNCIL AGENDA REPORT**

OFFICE OF THE CITY ADMINISTRATOR
2007 MAY 10 PM 6:54

TO: Office of the City Administrator
ATTN: Deborah Edgerly
FROM: Contract Compliance and Employment Services
DATE: May 22, 2007
RE: **Informational Report from the Contract Compliance and Employment Services Division on Final Project Closeout Procedures for City Monitored Construction Projects.**

SUMMARY

The purpose of this informational report is to provide Council with a description of the steps followed in the process of closing out (i.e. compliance determination and resolution) city-funded construction projects subject to contract compliance policies. Specifically, this report explains how projects are closed out relative to: (1) the Local /Small Local Business Enterprise Program (L/SLBE), (2) Local Employment Program (LEP) and (3) the 15% Apprenticeship Program.

Secondly, Council asked for the number of projects that were closed out by the City as buyer, but not by Contract Compliance & Employment Services (CC&ES).

Lastly, Council asked for a description of staffing needs necessary to restore (to Contract Compliance & Employment Services) the capacity to monitor, enforce, increase the number of Oakland residents and increase the number of Oakland certified firms who participate on city funded construction contracts.

FISCAL IMPACTS

This is an informational report. There are no fiscal impacts.

BACKGROUND

Closeout Procedures

Closeout procedures were designed to determine, at project end, the actual level of compliance and/or non-compliance relative to L/SLBE, 50% LEP and 15% Apprenticeship Programs. The final closeout process is the second phase of a two-phase compliance analysis. The first phase is conducted at the beginning of each award recommendation in order to determine the degree to which preferences are earned and to establish the promised or proposed level of expected compliance outcomes. That information is a mandatory part of the agenda report format and is provided with each council agenda report that makes a recommendation for a contract award for construction services.

The second phase is the final closeout process. This process determines if the proposed level of L/SLBE participation was achieved and if the contractor satisfied the 50% LEP and 15%

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Apprenticeship participation levels. All projects were closed out by the City of Oakland as buyer (meaning the City accepted the work and issued full payment), but not all projects were closed out with benefit of a final compliance closeout assessment. Council therefore asked that staff go back and determine the number of projects that were not closed out with the benefit of a compliance review. That information is found under Key Issues and Impact.

Prior to 2002, very aggressive measures were taken to assess and collect penalties and to negotiate resident hiring on city funded and non-city funded projects. In FY 2002-2003 a significant staffing reduction occurred and resulted in limited resources and capacity. The staffing reduction resulted in random sampling instead of project specific monitoring.

In 2005, the Public Works Agency implemented the LCP Tracker, a web based certified payroll submittal system, and made its use mandatory for construction contractors. This system replaced the equivalent of three (3) clerical staff responsible for processing certified payrolls. The LCP Tracker allows for more direct monitoring of project activity, accessible data and reporting capacity. CC&ES use this data to verify compliance by construction contractors.

KEY ISSUES AND IMPACTS

Council asked staff to prepare a report describing the steps followed in the process of closing out (i.e. compliance determination and resolution) city-funded construction projects subject to contract compliance policies. The following "Close Out Procedures reflect the steps that are followed, and the information that is gathered in order to determine contractors' compliance with L/SLBE business participation requirements, 50% LEP goals and 15% Apprenticeship participation requirements.

The basic final closeout steps are as follows:

1. Project closeout is initiated by a "Notice of Completion" (NOC) issued by the using agency (i.e. Public Works, Community & Economic Development etc.). In order to allow time for securing any outstanding documentation, the NOC must be delivered to the Contract Compliance and Employment Services Division at least thirty-five (35) days prior to the using agency's required release of the final payment for the using agency to comply with the timely payment provisions.
2. A compliance analysis is initiated in order to determine the extent to which requirements and goals were achieved for (a) L/SLBE Program (b) Local Employment Program and (c) 15% Apprenticeship Program hiring goals.
3. Compliance staff signs off on the final payment.

Specifically as it relates to the L/SLBE Program, the steps are as follows:

1. Upon receipt, the front desk staff dates and logs the Notice of Completion and within an hour forwards it to the assigned Assistant Contract Compliance Officer (Asst. CCO).
2. The Asst.CCO runs five (5) LCP Tracker Reports to include:
(a) Apprentice Hours Report, (b) All Notices Report, (c) Certified Payroll Summary Report, (d) Utilization Summary Report /Hours by City and (e) Workforce Utilization

Summary Report and forwards a copy to the Contract Compliance Officer and to the Local Employment Supervisor.

3. The CCO reviews the reports and requests (of the contractor) the LBE and SLBE Exit Report and Affidavit (Schedule F).
4. CCO determines compliance with stated L/SLBE participation and prevailing wage requirements and confers with Local Employment Supervisor to determine if the prime is in compliance with LEP and the 15% Apprenticeship Program. If both determine that the prime is in compliance, the CCO notes the file for final payment sign off.
5. If CCO determines that prime contractor has failed to: (a) submit certified payroll reports, (b) achieve a minimum of 20% L/SLBE, 50% LEP, or 15% Apprenticeship participation, OAWDPS,) the prime and city project manager are notified in writing. The prime is given ten (10) days to respond to the shortfall findings.
6. If the prime responds and the finding of non-compliance is resolved, then both the CCO and LEP note files for final payment sign off.
7. If the prime contractor fails to respond or is found to be in non-compliance, the CCO and/or Local Employment Supervisor will send a Notice of Non-Compliance to the prime with a copy to the city project manager. The notice will define the shortfall and will include an initial penalty assessment and/or options for alternative penalty resolution.
8. If the prime fails to respond or to resolve the non-compliance shortfall, the CCO and/or the Local Employment Supervisor, will formally assesses a penalty and notify the prime and city project manager, make notes to the file and waits for final payment process.
9. Project manager submits a final payment request to CCO for approval and sign off. If the prime is in compliance, the CCO signs-off on the final payment.
10. If the prime is in non-compliance, CCO signs-off on final payment with a notice to withhold payments in the amount of the penalty assessment.

Specific steps to a final closeout for 50% LEP and 15% Apprenticeship Programs are as follows:

1. Picking up at step "2" as noted above, Employment Services (ES) secures and reviews LCP Tracker reports.
2. Pursuant to the 50% LEP and 15% Apprenticeship Program, ES secures (from the prime) 'core employee' documentation, and non-city funded project resident hours. Allowing for the waiver of core employee hours, ES will adjust the 50% LEP and 15% Apprenticeship hiring goals to reflect 'core employee' project participation to establish final resident employment goals.
3. At project end, ES will secure and review employment documentation (from the prime contractor) justifying Oakland resident and apprentice hours on non-City funded projects. These may be applied toward a maximum of 50% of the local hire goals established for the LEP and 15% Apprenticeship Program.

4. ES presents to the contractor a summary of findings along with a determination of compliance or non-compliance and seeks to reconcile city calculations with prime and/or subcontractor calculations.
5. If there is an agreement with the findings, and there is a non-compliance shortfall, ES and the prime contractor will review options available to resolve the shortfall(s). Resolution options may include: (a) commitment from contractor to provide employment to Oakland residents and/or Oakland apprentices equal to 1 ½ times the identified shortfall hours within a specified resolution time frame.
6. If all non-compliance shortfall hours are not satisfied within the specified time frame, a monetary penalty is assessed against the remaining hours in the amount of 1 ½ times the wages that would have been earned by an Oakland resident.
7. ES will issue correspondence to the prime outlining the specifics of the penalty assessment and a time frame within which the penalty must be paid.

Projects without benefit of 50% LEP and 15% Apprenticeship final closeout.

Council asked staff to prepare a report detailing the number of projects that were closed out by the City as buyer, but not by Contract Compliance & Employment Services (CC&ES) during FY 2003-04 and FY 2004-05 (during the same timeframe as the Gallagher & Burk project).

Projects for FY 2003-04 and FY 2004-05 were reviewed in order to identify closed projects absent the benefit of a compliance analysis. This time frame was used because the LCP Tracker was not used at that time and staffing was at it lowest. Perhaps most significant was the untimely death of the LEP Supervisor who was responsible for monitoring compliance with the City's LEP and 15% Apprenticeship Program resident hiring goals. His position was not filled for several months.

During that period, there were seven (7) projects closed out without the benefit of a compliance analysis for the 50% LEP and 15% Apprenticeship policies. It will take approximately ninety (90) days to (a) secure, review and confirm contractor documentation of resident employment on non-City funded projects as well as (b) review and validate documentation justifying the core employee utilization exception and to make (c) a final assessment of compliance. We have initiated contact with four (4) of the seven (7) projects and have put forward recommendations to resolve the shortfall. It is important to note that staff's ability to revisit these projects to secure resolution is questionable and may ultimately rest on the willingness of the contractors to voluntarily address the outstanding compliance issue(s). It is also important to note that the loss of resident employment hours is equal to at least one and one-half times (1 ½) the shortfall hours as well as potential monetary penalty assessments.

The above referenced projects are as follows: (1) Oakland Coliseum Intercity Rail Station (2) Construction Relief on Bienati Way & Diamond Ave. (3) Railroad Ave. Improvements Phase 1-85th Ave. to Louisiana St. (4) Oakland Museum Dust Collector Project (5) Rehab by Crest, Michigan & 82nd Ave & Mac Author Blvd.(6) Rehab. Easement , Gravatt Dr. & Alvarado Rd. (7) Rehab. Easement , Morgan Ave. & Carlsen St.

Lastly, Council asked for a description of staffing needs necessary to restore (to Contract Compliance & Employment Services) the capacity to monitor and enforce city funded construction contracts and to increase the number of Oakland residents and increase the number of Oakland certified firms who participate on city funded construction contracts.

City Administration proposed returning five positions back to the original staffing complement in CC&ES. This is included in the recent budget document released on May 3, 2007. Specifically, in 'Significant Changes' for General Purpose Fund (GPF) FY 2007-08 it states "Fund additional positions for Contract Compliance and Employment Services in order to increase the capacity and effectiveness of the certification, contract compliance monitoring, and local employment functions (includes one-time start-up costs totaling \$20,000 in FY 2007-08)". A copy of this portion of the budget is attached for your consideration.

SUSTAINABLE OPPORTUNITIES

Economic: Employment of local Oakland residents and contracting opportunities for local Oakland certified firms.

Environmental: Not applicable.

Social Equity: Potential benefits to Oakland residents and local businesses.

DISABILITY AND SENIOR CITIZEN ACCESS

Not applicable.

RECOMMENDATION AND RATIONALE

Staff requests that council accept this information report.

ACTIONS REQUESTED OF CITY COUNCIL

It is recommended that Council accept this report.

Respectfully submitted,



Deborah L. Barnes, Manager
Contract Compliance and Employment Services

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Employment Services Supervisor
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APPROVED AND FORWARDED TO THE
PUBLIC WORKS COMMITTEE



OFFICE OF THE CITY ADMINISTRATOR

CONTRACTING AND PURCHASING

HISTORICAL REVENUE AND EXPENDITURES BY PROGRAM

Revenue

Program	FY 2005-06 Actuals	FY 2006-07 Midcycle Amended	FY 2007-08 Proposed Budget	FY 2008-09 Proposed Budget
Purchasing & Contract Administration	\$0	\$0	\$795,549	\$823,003
TOTAL *	\$0	\$0	\$795,549	\$823,003

Expenditure

Program	FY 2005-06 Actuals	FY 2006-07 Midcycle Amended	FY 2007-08 Proposed Budget	FY 2008-09 Proposed Budget
Administration	\$0	\$0	\$539,352	\$562,955
Contract Compliance & Employment Svcs	-	-	1,259,793	1,289,825
Purchasing & Contract Administration	-	-	1,405,926	1,462,786
TOTAL *	\$0	\$0	\$3,205,071	\$3,315,566

* Historical data is reflected in the City Administrator's Office, Finance & Management Agency, and Public Works Agency since the Department of Contracting and Purchasing is a newly created department beginning in FY 2007-08.

SIGNIFICANT CHANGES

General Purpose Fund (GPF)	FTE	FY 2007-08 Changes (in millions)	FY 2008-09 Changes (in millions)
Transfer Contract Compliance and Employment Services from the City Administrator's Office.	10.00	\$1.33	\$1.38
Transfer Contract Administration from the Public Works Agency.	5.00	\$0.54	\$0.57
*Fund additional positions for Contract Compliance and Employment Services in order to increase the capacity and effectiveness of the certification, contract compliance monitoring, and local employment functions (includes one-time start-up costs totaling \$20,000 in FY 2007-08).	5.00	\$0.47	\$0.47

All Other Funds	FTE	FY 2007-08 Changes (in millions)	FY 2008-09 Changes (in millions)
Central Stores Fund (4500)			
Transfer Purchasing Division from the Finance & Management Agency.	7.00	\$0.75	\$0.78
Recycling Fund (1710)			
Transfer Purchasing Division from the Finance & Management Agency.	1.00	\$0.12	\$0.12