

**CITY OF OAKLAND
COUNCIL AGENDA REPORT**

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2008 MAY 29 PM 4:42

TO: Office of the City Administrator
ATTN: Deborah Edgerly
FROM: Department of Contracting and Purchasing
DATE: June 10, 2008

RE: Informational Report on the Status of Compliance Analysis Performed on Construction Projects Closed During FY03-04 and FY04-05 Without Benefit of Local Employment Program and 15% Apprenticeship Program Compliance Analysis. /

SUMMARY

The purpose of this report is to provide information on the compliance analyses performed on construction projects that were closed out by a City agency but not by the Department of Contracting and Purchasing, Social Equity Division during FY 03-04 and FY 04-05.

FISCAL IMPACTS

Since this is an informational report only, no fiscal impacts are included.

BACKGROUND

On May 22, 2007, the Department of Contracting and Purchasing, Social Equity Division, provided the Public Works Committee with a report outlining the procedures associated with determining compliance with the City's Local/Small Local Business Enterprise Program, Local Employment Program (LEP) and 15% Apprenticeship Program. In addition to the review of procedures for determining compliance with City policies, Council was informed that, due to limited resources, some construction projects were closed out by a City agency without an analysis of compliance with the City's Local Employment Program (LEP) and 15% Apprenticeship Program resident hiring goals during FY03-04 and FY04-05, respectively. Council requested an update on compliance analyses performed on the identified projects.

PROGRAM/POLICY DESCRIPTION

Local Employment Program (LEP)

The Local Employment Program applies to any construction contract or development agreement with the City. The LEP policy establishes a goal for Oakland-resident employment on public works projects. Specifically, for work performed at the construction site, this policy establishes a goal of 50% of the work hours to be performed by Oakland residents on a craft-by-craft basis.

In addition, a minimum of 50% of all new hires on the project (on a craft-by-craft basis) must be Oakland residents, and the first new hire must be an Oakland resident. A contractor or developer must achieve the goals or secure an exemption from the City.

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LEP General Provisions

The City requires its developers and contractors to abide by the Local Employment Program and also requires that the developers and contractors enforce the provisions of the Program on all their subcontractors. The Local Employment Program will be incorporated in all contract specifications as well as Dispositions and Development Agreements (DDAs). The goals set forth must be maintained for the duration of the project.

The LEP applies when the project includes the purchase of construction services either by the City as buyer or by a City Financial Assistance Recipient (CFAR); the City is the buyer and the dollar amount of the project exceeds \$50,000.00 dollars; the project exceeds 30 days; or new hires are needed to perform the work on the project.

The LEP does not apply when the contract or subcontract is performed by an owner/operator; or the project requires less than 140 hours of work; the project is performed as emergency work; a job requires no more than two craft-persons to perform the duties of the entire project; or a contractor's core workforce includes 50% Oakland residents, and no additional employees will be hired.

Conditional Exemptions:

Hours of work performed by employees of a subcontractor on a LEP-covered project may not be assessed against the contractor's LEP goals, if the subcontract will be: (1) performed by an owner operator; (2) performed in less than 140 hours; (3) the subcontractor's core workforce includes 50% Oakland employees, and no additional employees will be hired; or (4) no more than two craft persons are required to perform the work of the subcontract, the subcontractor hires no new employee to perform the work and the subcontractor is a small business within the meaning of City policies.

If circumstances arise subsequent to the issuance of the contract, the results of which the contractor believes will prevent attaining the local-hire goals, the contractor must immediately notify the Social Equity staff by requesting a conditional exemption. Staff shall meet with the applicant as necessary and issue a decision within five days, including a determination as to any retroactive liability for failure to achieve the goals for work undertaken prior to the application for such a conditional waiver.

Both programs would only be triggered if the contractor needed to hire additional workers to perform assigned work. Contractors would have no hiring goal, except that goal based on work that could not be performed by their existing employees. The lack of resident work hours do not constitute a violation of policy if the work could be performed by existing workers and no new hiring was required to perform assigned work. The usage of existing or 'core employees' was capped at 50% of total project hours in June of 2006. This established a minimum of 50% of a project's total hours to serve as the basis for establishing resident hiring goals, and not the potential need for additional workers.

15% Apprenticeship Program

Also referred to in the early stages of development as the Oakland Apprenticeship Workforce Development Partnership System, the 15% Apprenticeship Program is an essential pathway to a productive career in the construction trades.

The policy provides for the establishment of a 15% apprentice resident hire goal, based on total work hours and on a craft-by-craft basis, to be performed by Oakland residents. Further, the policy allows contractors to apply the 15% of total work hours to be performed by apprentice resident hire goal in two ways: a) 15% of total work hours to be performed by apprentice resident hires on Public Works or ORA contracts, or b) 7.5% of total work hours to be performed by apprentice residents hired on Public Works or ORA contracts, and 7.5% of total work hours to be performed by apprentice residents hired on non-Oakland contracts.

Exemptions may be granted to contractors, however, in no case shall a contractor be required to displace any of their current registered.

General Provisions

The City has determined that there is a need for increased Oakland resident training and apprenticeship opportunities in the construction industry and that a diverse and well-trained workforce is critical to the economic as well as social revitalization of the region.

The City shall require its developers and contractors to abide by the City's Apprenticeship Workforce Development Partnership System. The City shall also require that the developers and contractors require the provisions of the System on any and all parties with whom the developer and contractors intend to enter into a contract to perform any portion of said work.

The Apprenticeship goals set forth must be maintained for the duration of the project. On Public Works and Oakland Redevelopment Agency projects, contracts with an estimated cost of \$15,000 or more, the Director of the Department of Contracting and Purchasing is authorized to require of the developers, general contractors and subcontractors through bidding and contract documents, that at least 15% of the total labor hours on Public Works and ORA projects, based on the awarded contract price be performed by Oakland residents as apprentices, enrolled in a registered apprenticeship program approved or recognized by the State of California Division of Apprenticeship Standards. Further the policy will allow contractors to apply the 15% of total work hours be performed by apprentice resident hire goal in two ways: (a) 15% of total work hours be performed by apprentice resident hire on Public Works or Oakland Redevelopment Authority (ORA) contracts, or (2) 7.5% of total work hours be performed by apprentice resident hired on Public Works or ORA contracts, and 7.5% of total work hours be performed by apprentice hired on non-Oakland contracts.

KEY ISSUES AND IMPACTS

Staff reviewed all files and determined that there were seven (7) projects that did not receive a Local Employment Program (LEP) or 15% Apprenticeship Program close-out. The seven (7) projects are noted below in Table 1.

TABLE 1		Total Project Amount	Local Employment	15% Apprenticeship	SHORTFALLS		
PROJECT NAME					Hours	Dollars	Remaining
1	Rehab of SS /Easement between Morgan Ave & Carlson	\$57,262	N/A	N/A	0	0**	
2	Rehab of SS in an easement between Gravatt Dr & Alvarado	\$105,428	N/A	N/A	0	0**	
3	Railroad Ave Improvements 85th Ave & Louisiana	\$749,925	Satisfied	Satisfied	522.63	\$18,696.87	
4	Oakland Coliseum Inner-city Rail Station	\$3,300,000	Satisfied	Satisfied	93.82	\$3,002.14	
5	Rehab. Of SS Crest ,Michigan, 82nd Ave to Macarthur	\$1,271,051	Satisfied	Satisfied	805.28	\$19,999.93	
6	Oakland Museum of California Dust Collector	\$240,000	Satisfied	Not Satisfied	27.5	\$644.60	\$644.60*
7	Construction Relief on Beinati	\$538,000	Not Satisfied	Not Satisfied	431.53	\$13,773.67	\$13,773.67
Dollar amount: all projects		\$6,021,906			1,880.76	\$56,117.21	\$14,418.27
* Not Applicable							

As noted in Table 1 above:

- Two (2) of the projects (#s 1 and 2) had no compliance issues for either the Local Employment Program or 15% Apprenticeship Program. These were projects that were less than thirty days in duration and exempt from the Local Employment Program and 15% Apprenticeship Program resident hiring goals
- Three (3) of the projects (#s 3,4, and 5) had non-compliance issues with the Local Employment Program and 15% Apprenticeship Program that were resolved through the provision of employment to Oakland residents equal to project shortfall hours plus penalty. Contractors documented employment of Oakland residents on projects that did not receive any City of Oakland funds or subsidies.
- One (1) of the projects (#6) had 15% Apprenticeship utilization shortfall hours for which a commitment to address on future work was secured. The contractor has committed employment on non-City funded projects and/or increased compliance goals on any City funded projects if selected.
- One (1) of the projects (#7) staff is continuing to make efforts to work through compliance issues with the prime contractor. There were resident employment shortfall hours for both the Local Employment Program and 15% Apprenticeship Program. There were difficulties securing the required certified payrolls for this project; and it is not anticipated that this contractor will bid on subsequent work with the City.

In summary, Oakland journey-level and apprentice workers earned \$ 56,117.21 in wages worked on non-City funded project(s).

It is important to note that the Local Employment Supervisor successfully negotiated resolution to projects 3, 4, and 5, noted in the chart above. The two remaining are working to come into compliance.

SUSTAINABLE OPPORTUNITIES

Since this is an informational report only, no sustainable opportunities were included.

DISABILITY AND SENIOR CITIZEN ACCESS

Since this is an informational report only, no benefits and impacts for the disability and senior citizen communities were included.

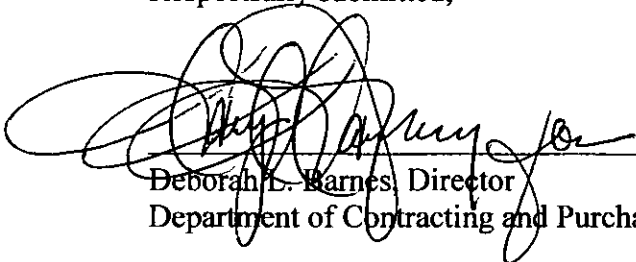
RECOMMENDATION(S) AND RATIONALE

This is an informational report only, staff recommendations were not included.

ACTIONS REQUESTED OF CITY COUNCIL

It is recommended that Council accept this report.

Respectfully submitted,



Deborah L. Barnes, Director
Department of Contracting and Purchasing

Prepared by:
Jonothan Dumas,
Employment Services Supervisor
Department of Contracting and Purchasing

APPROVED AND FORWARDED TO THE
PUBLIC WORKS COMMITTEE



OFFICE OF THE CITY ADMINISTRATOR

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