

RECOMMENDATION APPROVED AND  
RESOLUTION NO's. 17-8165 & 17-8166 ADOPTED  
BY THE BOARD OF HARBOR COMMISSIONERS



Executive Director's  
Report to the  
Board of Harbor Commissioners

September 7, 2017

*Amber M. Klesges*

AMBER M. KLESGES  
Board Secretary

DATE: AUGUST 29, 2017

FROM: EXECUTIVE OFFICE

SUBJECT: RESOLUTION NO. 17-8165 + 17-8166  
APPROVAL OF CITY OF LOS ANGELES HARBOR DEPARTMENT  
CONSTRUCTION CAREERS POLICY

**SUMMARY:**

The City of Los Angeles Harbor Department (Harbor Department) has negotiated a ten-year Port-wide Project Labor Agreement (POLA-PLA) with the building trade unions affiliated with the Los Angeles/Orange Counties Building and Construction Trade Council (Building Trades). The POLA-PLA will serve as a blanket agreement between the Harbor Department and the Building Trades hired to work on selected Capital Improvement Program (CIP) projects for a term of ten years. The POLA-PLA seeks to address unemployment and underemployment in concentrated poverty neighborhoods, particularly near the Port of Los Angeles (POLA), and seeks to advance the skills of the local labor pool. To this end, the POLA-PLA requires a hiring minimum of local resident workers and transitional workers.

To ensure the POLA-PLA is properly implemented, staff recommends the approval of the revised Harbor Department Construction Careers Policy (Policy). A Policy was previously approved by the Board of Harbor Commissioners (Board) along with the 5-year POLA-PLA, but was modified to meet the current requirements reflected in the new 10-year POLA-PLA. The Policy determines stakeholder roles and responsibilities. It also includes an enforcement section that assesses Liquidated Damage on the Prime Contractor for non-compliance with the POLA- PLA requirements.

**RECOMMENDATION:**

It is recommended that the Board of Harbor Commissioners (Board):

1. Find that the proposed action is exempt from the requirements of the California Environmental Quality Act (CEQA) under Article II, Section 2(f), of the Los Angeles City CEQA Guidelines;

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CONSTRUCTION CAREERS POLICY**

2. Approve Resolution No. 17-8166 adopting the Harbor Department Construction Careers Policy; and
3. Adopt Resolution No. 17-8165.

**DISCUSSION:**

Background / Context – The purpose of the Policy is to determine the stakeholders' roles and responsibilities on construction projects covered under the ten year POLA-PLA to promote efficiency of construction operations and provide for orderly settlement of labor disputes and grievance without strikes or lockouts, thereby promoting the public interest in assuring the timely and economical completion of the project, and elimination of construction labor-related disruptions to Port operations.

On March 17, 2011, the Board approved the previous five year POLA-PLA agreement and accompanying Construction Careers Policy, and on May 11, 2011 the Council adopted the PLA under Agreement No. 11-2955. The creation of the five year POLA-PLA increased efficiency by eliminating the need to negotiate and approve separate project labor agreements at the onset of each applicable project. The proposed Policy, together with the ten year POLA-PLA will perform the same function, but will further increase efficiency by increasing the duration to ten years.

The Harbor Department has been working with staff from the Department of Public Works (Public Works) and the City Attorney to negotiate the POLA-PLA and associated Construction Careers Policy. The negotiating team reached a tentative agreement with the Building Trades on May 11, 2017 resulting in modifications to the Policy being presented herein for approval (Transmittal 1).

Harbor Department Construction Careers Policy- The Harbor Department Construction Careers Policy (Transmittal 1) determines stakeholder roles and responsibilities as they apply to the POLA-PLA. The Policy requires that the Harbor Department actively monitor and report on the targeted hiring progress for each Project. This monthly report includes the number of Local Residents, Transitional Workers, and apprentices hired for each Project under the POLA-PLA.

In line with the Policy, the POLA-PLA requires Building Trades to actively recruit, develop and hire local workers that reside within the Tier 1 and Tier 2 zip codes. As a measure of enforcement, Liquidated Damages may be assessed for non-compliance with the POLA-PLA. Currently, the Harbor Department utilizes the assistance of the Department of Public Works Bureau of Contract Administration (BCA) for PLA administration as deemed necessary by Harbor Department staff.

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CONSTRUCTION CAREERS POLICY

**ENVIRONMENTAL ASSESSMENT:**

The proposed action is approval of the Policy. As an administrative activity, the Director of Environmental Management has determined that the proposed action is exempt from the requirements of the California Environmental Quality Act (CEQA) in accordance with Article II, Section 2(f) of the Los Angeles City CEQA Guidelines.

**FINANCIAL IMPACT:**

Currently, Harbor Department Construction Division staff (Staff) works with the BCA to administer the Policy, together with the Port-wide Project Labor Agreement. Staff salary and the BCA administration costs to implement the Policy will be covered under the administration cost for the POLA-PLA.

**CITY ATTORNEY:**

The Office of the City Attorney Harbor Department reviewed the Policy Document.

**TRANSMITTAL:**

1. Construction Careers Policy

FIS Approval: MB (initials)

CA Approval: JM (initials)

  
ANTONIO V. GIOIELLO, P.E  
Deputy Executive Director

**APPROVED:**

  
FOR

EUGENE D. SEROKA  
Executive Director

Author: Marlys White  
MW:lh  
POLACCPBO1



**THE PORT  
OF LOS ANGELES**

**CONSTRUCTION  
CAREERS POLICY**

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## 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 DOL and California DAS.
3. "Awarding Authority" means the City of Los Angeles, acting by and through the Board of Harbor Commissioners, or any employee or officer of the Board that is authorized to award or enter into any contract on behalf of the Board.
4. "Board" means the Los Angeles Board of Harbor Commissioners.
5. "Bureau of Contract Administration" (BCA) means the designated bureau within the City's Department of Public Works which may provide support services to the Harbor Department in administering the Policy and the PLA.
6. "City" means the City of Los Angeles, a municipal corporation, and all City awarding authorities.
7. "Construction Contract" means a City contract which has been awarded by the Board, and is necessary to complete the Project.
8. "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 has entered into a contract with the Harbor Department or any of its contractors or subcontractors/owner operators of any tier, with respect to the construction of any part of the Project(s) under contract terms and conditions approved by the Board.
9. "Core Worker" means a verifiable member of a C/S/E's core workforce for the purpose of the PLA and this Policy if the worker's name appears on the C/S/E's active payroll for 60 of 100 working days immediately prior to award of the construction contract and meets all standards required by applicable local, state or federal law or regulation.
10. "Covered Project(s)" or "Project" means a project or projects that have been included in the Ten-Year "Capital Improvement Program (CIP) Project List" included as Attachment "E" to the PLA, or so designated by the Board. The Board may identify additional projects that are appropriate for coverage by the Agreement for

inclusion under the CIP and include such projects by Board Resolution. The Board shall request an annual review of the Harbor Department Capital Improvement Program to identify any new projects appropriate for coverage by the Agreement.

11. "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 PLA and/or Policy.
12. "Employment Hiring Plan" (EHP) means a C/S/E's detailed hiring plan as described in BCA's Targeted Hiring Guidelines for Contractors and the Policy or other applicable Department policy.
13. "Engineer" means the Chief Harbor Engineer of the City of Los Angeles Harbor Department, Construction Division, or its authorized representative.
14. "Executive Director" shall mean the Executive Director of the City of Los Angeles Harbor Department, or his or her designee.
15. "FHWA Project" means a Harbor Department Project that is funded in whole or in part by the Federal Highway Administration (FHWA).
16. "Harbor Department" means the city of Los Angeles Harbor Department.
17. "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, such as those listed in the BCA's Targeted Hiring Guidelines for Contractors. The Jobs Coordinator must be able to demonstrate or document to the BCA that it has the requisite qualification and/or experience to fulfill the duties and responsibilities as outlined in the Policy.
18. "LA/OCBTC" (Trades Council) means the Los Angeles /Orange Counties Building and Construction Trades Council.
19. "Letter of Assent" means the document that each C/S/E (of any tier) must sign and submit to the Engineer or designated administrator, which formally binds them to adherence to all the forms, requirements and conditions of the PLA and this Policy.
20. "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.
21. "Local Resident" means an individual whose primary residence is within the Tier 1 or Tier 2 zip code areas.
22. "Long-Term Unemployment" as defined by the Bureau of Labor Statistics means being jobless for 21 weeks or more, as defined.

24. "PLA" means the Project Labor Agreement entered into between the Harbor Department of the City of Los Angeles and Unions, applicable to Covered Projects.
25. "Policy" means this Harbor Department Construction Careers Policy.
26. "Port" means the Port of Los Angeles.
27. "Project Work" means construction work performed as part of a Covered Project.
28. "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 with the Harbor Department.
29. "Reporting Period" means the Harbor Department's indicated reporting period for measuring the targeted hiring efforts of the C/S/Es. These reporting periods shall be at the Harbor Department's determination of 10%, 30%, 50%, 70% and 90% construction completion phases.
30. "Targeted Hiring Guidelines for Contractors" means the document provided by the Department to assist C/S/E's in implementing the targeted hiring procedures.
31. "Tier 1" means the zip codes identified in Article 7.4 of the PLA, which fall within an approximate ten mile radius of the Port and in which the rate of unemployment is in excess of 105% of the County of Los Angeles' unemployment rate at the time of application and/or are within the area of Port-related operations and activity.
32. "Tier 2" means the zip codes within the City, identified in Article 7.5 of the PLA, that includes at least 2 census tracts (or a portion thereof) in which the median annual household income is less than \$62,627 per and/or where the rate of unemployment is in excess of 100% of the County of Los Angeles' unemployment rate at the time of application.
33. "Transitional Worker" means any individual whose primary place of residence is within a Tier 1 or Tier 2 zip code of the City of Los Angeles, and who prior to commencing work on a project has been certified as satisfying at least one of the following criteria:
  - (1) having a Veteran status; having a documented history of involvement with the criminal justice system; being homeless; or
  - (2) is an individual facing two or more of the following barriers to employment: having a household income less than 50% of the Los Angeles County median annual household income, receiving public assistance, lacking a GED or high school diploma, being a custodial single parent, suffering from long term unemployment, being emancipated from the foster care system, or being an

apprentice, in a program described in Section I Number 1 above , with less than 15% of the apprenticeship hours required to graduate to journey level.

34. "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.
35. "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.
36. "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 PLA, acting in their own behalf and on behalf of their respective affiliates and member organizations whose names are subscribed hereto and who have through their officers executed the PLA.

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

1. Covered Projects:
  - (a) Except as provided otherwise herein, this Policy applies to all Covered Projects contained in the 10-Year CIP list, and awarded by the Board.
  - (b) The Board may identify additional projects that are appropriate for coverage by the Policy and the PLA and include such projects by Board Resolution based on specific findings that such coverage will advance the Harbor Department'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 the Harbor Department determines that a project to which this Policy applies is an FHWA Project or other grant-funded project, the Department shall modify or not enforce any aspect of the Policy or PLA in accordance with a valid and binding instruction from the U.S. Department of Transportation or applicable funding authority.

### **SECTION III. IMPLEMENTATION**

Prior to bid, Harbor Department 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 Executive Director specifies that the Covered Project contains the PLA and this Policy;
2. That the Bid specifications require all contractors submitting bids or proposals agree to the terms of the PLA and this 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 PLA and this Policy and require compliance with 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 construction contracts or projects where 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 CIP, Harbor Department 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 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 work hours on each project shall be performed by Local Residents residing within Tier 1 as described in Article 7.4 of the PLA. If the 30% local hire is not attained utilizing Tier 1, the outreach shall expand to the Tier 2 as described in Article 7.5 of the PLA.
- (b) At least 20% of total work hours on each project will be performed by apprentices, but the hours performed by apprentices in each individual craft shall not exceed the ratio to journeymen established by the applicable craft union's DAS approved apprenticeship standards. The parties agree that residents in the Tier 1 or 2 zip code areas will perform 50% of all apprenticeship hours worked on the Project.
- (c) At least 10% of total hours worked on each project shall be performed by Transitional Workers residing within Tier 1 or Tier 2 zip code areas described in Articles 7.4 and 7.5 of the PLA respectively and the remaining zip code areas within the City of Los Angeles. These hours shall be applied towards the 30% Local Resident targeted hiring.

**SECTION VI. RESPONSIBILITIES OF HARBOR DEPARTMENT, C/S/Es, UNIONS, and JOBS COORDINATOR**

1. Harbor Department Responsibilities:

- (a) Work with BCA or the Harbor Department's designated PLA administrator to monitor and enforce the targeted hiring measures of the 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.
- (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) Work with BCA or the Harbor Department's designated PLA administrator to post local hire status reports on the BCA website (<http://bca.lacity.org>) for Covered Projects.
- (e) Inform the Board on a quarterly basis regarding 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 Harbor Department for approval by the Executive 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 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 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:
  - (i) Recommend a Jobs Coordinator for approval by the Harbor Department.
  - (ii) Upon Department's approval of its Jobs Coordinator, notify its subcontractor (of any tier) who the Jobs Coordinator is.
  - (iii) Provide within 10-calendar days upon request by the Department 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 PLA and Section 5 of 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 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 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 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 Transitional Worker within the 48-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 Harbor Department 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 Harbor Department, BCA, or designated representatives, records and information that are deemed relevant to monitoring and enforcement of the provisions of the 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 Harbor Department, BCA or designated representatives deem necessary in order to monitor compliance with the provisions of the 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 Harbor Department a verified statement of the number of journeymen 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 the Harbor Department, the Prime Contractor and its C/S/Es (of any tier) must provide documentation of their Local Resident, Apprentice and Transitional 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 Transitional 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 Transitional Worker apprentices participating in joint Labor/Management apprenticeship programs and provide the Harbor Department 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 Transitional 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, transitional 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 Transitional Worker status of workers.
  - (vii) Establishing a referral and retention tracking mechanism for placed local and/or transitional 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 transitional workers.

(ix) Liaising with the various building trades crafts for referral and placement of local hire and/or transitional 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 Transitional Worker 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 whom 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 Transitional Worker targeted hiring requirements.

(viii) Work closely with Harbor Department staff, the building trades and C/S/Es in achieving the targeted hiring.

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

## **SECTION VII. COMPLIANCE**

The Harbor Department or its authorized representatives shall determine whether a Prime Contractor and its C/S/Es have complied with the requirements of the PLA and the Policy. The Prime Contractor is ultimately responsible for its and its C/S/Es (of any tier) compliance with the 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 PLA and Policy have been satisfied for a Project, then the Prime Contractor and its subcontractors (of any tier) working on that Project shall be deemed to be in compliance.

2. If the targeted hiring requirements of the PLA and the Policy have not been satisfied for a 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 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 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 Harbor Department.
  - (b) Requests to Unions, through Craft Request Forms, of sufficient numbers of Local Residents and Transitional 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 Transitional Workers within the 48 hours following the C/S/E's request and the C/S/E's fair consideration of any Local Resident or Transitional Worker subsequently referred by the Jobs Coordinator.
  - (d) Accurate records documenting the C/S/E's compliance efforts that include (but are 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 Transitional 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 Project agrees:

1. To be liable to the Harbor Department 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 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 in accordance with Section VII of this Policy will cause harm to the Harbor Department 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 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 Harbor Department or their designated representative to develop a recovery plan for compliance. The Prime Contractor has until the next Reporting Period to effectuate the recovery compliance plan 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 PLA and/or this 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.