

CITY OF OAKLAND



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July 2, 2015

Phil Tagami
California Capital and Investment Group
300 Frank Ogawa Plaza, Suite 340
Oakland, CA 94612

Re: Clarification of interpretation issues regarding Construction Jobs Policy for Public Improvements

Dear Mr. Tagami:

We write to you in your capacity as construction manager for the public improvements construction at the former Oakland Army Base (the "Project") pursuant to the Property Management Agreement dated October 23, 2012 ("PMA") and the Design Build Contract dated October 16, 2013.

We have spoken and met with your staff many times over the past months regarding a number of issues raised with CCIG by contractors, regarding the City's implementation of the Construction Jobs Policy for Public Improvements ("Jobs Policy") applicable to the Project. The City appreciates your efforts and cooperation in seeking to resolve these issues, and provides the following information to clarify its interpretation of and enforcement approach to the Jobs Policy.

1. City Clarification Process.

We understand that Project contractors have requested prompt and final responses to various questions regarding interpretation, implementation, or enforcement of the Jobs Policy. On that point:

- In order to generate a final, written clarification from the City regarding the Jobs Policy, requests for clarification must be made in writing.¹

¹ Requests for clarification should be e-mailed to Deborah Barnes, Director of the City's Division of Contracts and Compliance (dbarnes@oaklandnet.com), with a cc to Dianne Millner (dmillner@oaklandcityattorney.org) and Julian Gross (julian@juliangross.net).

- The City will make every effort to provide final, written clarifications within two weeks of receiving each written request. If that deadline cannot be met, a date certain for the response shall be provided to CCIG.
- The City directs CCIG, in its capacity as construction manager, to take the following steps with regard to all clarifications issued by the City (including this letter): (i) forward the clarifications to the design-build contractor; (ii) ensure that all Project contractors are been notified that clarifications have been issued; and (iii) post clarifications on a website accessible to all Project contractors.

2. Contractor request that owner-operator truckers be exempted from coverage under the Jobs Policy.

The City has determined that sole proprietors (including owner-operator truckers) are *not covered* by hiring provisions of the Jobs Policy. This determination is based on the Jobs Policy's definition of "Contractor" as an entity "employing individuals to perform Project Construction Work ..." (Jobs Policy, Section II, Definitions.)

This determination applies only to sole proprietors, defined as businesses for which the owner of the company performs all of the work on the Project. If an *employee* of the company performs any work on the Project (whether that individual was retained by the company prior to employment on the Project or hired for the Project), then that company meets the Policy's definition of "Contractor," and is covered by hiring provisions of the Policy. (If a company retains an independent contractor, rather than an employee, to perform work, then that independent contractor is a lower-tier subcontractor and itself must comply with the Jobs Policy.)

The City will not enforce hiring provisions of the Jobs Policy against contractors for which the company owner performs all work hours on the Project.

3. Contractor request that hazardous-materials trucking companies be exempted from the Jobs Policy.

There is no basis in the Jobs Policy for exempting hazardous materials trucking companies. The fact that such companies are exempt from the PLA is irrelevant to the issue of Jobs Policy coverage. The City will enforce the Jobs Policy with regard to hazardous materials trucking companies.

4. Contractor request that “on-call” and “limited scope” contractors be exempted from the Policy.

There is no basis in the Jobs Policy for exempting contractors from the Jobs Policy on the basis that they work intermittently, or for only a small number of hours. The City will enforce the Jobs Policy with regard to such contractors.

Please note that binding compliance determinations will be made only upon conclusion of a contractor’s work on the Project. “On-call” contractors can therefore aggregate hours for all Project work while an on-call contract is in effect.

5. Contractor request that liquidated damages not be assessed in cases where a subcontractor is terminated “for convenience” or goes out of business prior to completion of its work on the Project.

In general, the reason why a contractor concludes its work on the Project is irrelevant to the City’s compliance determination. The Project’s design-build contract requires the design-build contractor to withhold liquidated damage amounts from final payment to a noncompliant subcontractor, regardless of the reason for conclusion of the subcontract. (Design-Build Contract, section A.13.11.1.) In cases where the design-build contractor does not do this, the City will withhold a corresponding amount from payment to the design-build contractor. (Design-Build Contract, sections A.5.5.1 and A.9.5.1.) While the City may consider unusual circumstances with regard to particular subcontracts, the general rule is that liquidated damages will be applied in any case in which a noncompliant contractor has completed its work.

6. Contractor request for clear instructions regarding the documentation that will be required in order for a subcontractor that has completed its work to demonstrate compliance with the Jobs Policy through the “process” requirements set forth in Jobs Policy section III.B.

Contractors have been provided sufficient instructions with regard to the information that will be needed in order to demonstrate compliance through Jobs Policy section III.B. In addition, all information requested by the City in compliance reviews will be information that is closely related to Jobs Policy responsibilities and that should be easily accessible to contractors, such as the mechanism by which a particular worker was hired.

However, as a convenience to all parties involved in the Jobs Policy compliance process, the City will consolidate instructions regarding compliance documentation, and release a set of instructions and forms for electronic distribution. CCIG will be notified of any changes to these instructions and forms prior to implementation of them.

7. Contractor request for clarification regarding apprentice utilization requirements for DIR trade classifications represented by a single union.

Contractors have questioned how to apply the Jobs Policy's apprentice utilization requirements in cases where a single union represents multiple trade classifications released by the California Department of Industrial Relations (DIR), and the corresponding apprenticeship program does not distinguish between such trade classifications.²

In such cases, contractors should retain an apprentice from the applicable union and credit the apprentice's hours toward the DIR trade classification in which the apprentice is actually working. The apprentice will need to be assigned a classification for purposes of prevailing wage payment and compliance, and that same classification should be used for implementation of the Jobs Policy.

8. Contractor request that subcontractors be allowed to credit off-site hours worked by all apprentices, not just Disadvantaged Workers, to address any shortfall in on-site apprentice utilization.

There is no basis in the Jobs Policy for crediting off-site hours toward satisfaction of the *apprentice* utilization requirement. Please note that the requirement to utilize *Disadvantaged Workers* (who are by definition apprentices) may be satisfied through use of off-site hours; this requirement is separate from the Policy's apprentice utilization requirement. (See Jobs Policy Sections III.C.2 and II.C.3.)

9. Contractor request that compliance actions take into account the dates on which clarifications of the Jobs Policy were released, to assure fairness in cases where contractors allege that they did not have information necessary to comply.

In general, the language of the Jobs Policy and the additional information provided by the City provide reasonable specificity to contractors regarding Jobs Policy requirements and enforcement. However, in any case in which the City, in its sole discretion, determines that Jobs Policy was insufficiently clear with respect to required implementation measures or has provided inaccurate information; the City will consider the circumstances on a case-by-case basis in compliance assessments.

² For example: DIR recognizes several construction trades represented by the Operating Engineers' union, including "Operating Engineer (Heavy and Highway Work)," "Operating Engineer (Landscape Construction)," and others. However, the Operating Engineers' joint labor-management apprenticeship program does not distinguish between such crafts.

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If CCIG or contractors have any questions regarding the above clarifications and determinations, the City team will be available to discuss. If additional written clarification is needed, requests should be in writing, as described in paragraph 1, above.

In addition, the City will schedule a meeting with the design-build contractor and interested subcontractors to explain these positions and discuss any other outstanding issues regarding the Jobs Policy.

We appreciate CCIG's assistance in identifying issues relevant to the Jobs Policy, and in communicating the City's positions to all Project contractors.

Very truly yours,



Barbara J. Parker
City Attorney



Claudia Cappio
Assistant City Administrator

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OAKLAND ARMY BASE JOB POLICIES COMPLIANCE CHECKLIST AT A GLANCE

Following are instructions for submitting proof of compliance with the Oakland Army Base Jobs Policy. This will expedite the compliance review.

The Oakland Army Base Job Policy requires that the following requirements be met:

50% of project work hours are performed by residents for each construction trade.
25% of the hours worked by apprentices are performed by disadvantaged workers and
20% of project work hours are performed by apprentices.

If Contractors did not satisfy the percentage requirement, they must submit proof of compliance with the hiring and referral processes described Section III-B of the Jobs policy as follows.

1. Proof of request from Union Hall
2. Proof of request from West Oakland Jobs Resource Center

If a contractor has a shortfall of hours but did not follow the Section III-B of the Jobs policy, they may only submit off site hours that accrued concurrent to each contract performed on the Oakland Army Base project.

Acceptable forms of verification are:

- Valid California State Photo Identification Card or Driver's License. AND

- Either I -

- Copy of Certification from the State of California's Division of Apprenticeship Standards.

- Or II -

Copy of Trade Work Referral / Dispatch Notice.



The following checklist is a summary of required reports for the LEP. Please check the box corresponding to reports attached and include the section where each report can be found.

Refer to the Compliance Analysis Requirements Chart for completing reports 1 through 4.

Reports	Section
<input type="checkbox"/> 1. Proof of Apprenticeship	<input type="checkbox"/>
<input type="checkbox"/> 2. Proof of Oakland Residency	<input type="checkbox"/>
<input type="checkbox"/> 3. Proof of Oakland Resident Offsite Hours	<input type="checkbox"/>
<input type="checkbox"/> 4. Copy of Request from Union Hall	<input type="checkbox"/>
<input type="checkbox"/> 5. Copy of Job Request from West Oakland Jobs Resource Center	<input type="checkbox"/>
<input type="checkbox"/> 6. Copy of Response from West Oakland Jobs Resource Center	<input type="checkbox"/>
<input type="checkbox"/> 7. Copy of Non Apprenticeable Documentation (if applicable)	<input type="checkbox"/>

Note: Do not submit copy of employees' social security card. Provide only the last 4 digits of the social security card number.

Prepared By:

Name _____

Title _____

Telephone _____

Extension _____

Email _____



AT A GLANCE CLOSE-OUT DOCUMENTATION CHART

<p>NOTE: This chart outlines required documents that must be submitted with all off-site documentation.</p> <p>If accepted, these hours will augment project hours in relevant areas where the percentage goals have not been met.</p> <p>Please note, (Where "P" appears, category must be included)</p>		Employee Name	Current St. Address	Valid CA State Photo ID Card/Driver's License	Trade Classification	Skill Level Journey/Apprentice	Date of Hire	Total Hours Worked per Employee on Project	Contractor's Certified Payroll Report/Not LCP Tracker	Quarterly Wage and Withholdings Report (DE-6)	Last 4 SSN (only)	Project Name and City	Ca. Dir Of Apprentices Standards Certification	Trade Work Referral/Dispatch Notice	Oakland Army Base Dispatch Number on Document	Oakland Army Base Project Name on Document
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PROOF		1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
A	Disadvantaged Worker	✓	✓		✓		✓				✓		✓	✓	✓	✓
B	Apprenticeship	✓	✓		✓		✓				✓		✓	✓	✓	✓
C	Oakland Residency	✓	✓	✓	✓	✓	✓				✓				✓	✓
D	Oakland Resident Offsite Hours **	✓	✓	✓	✓	✓	✓	✓	✓		✓	✓			✓	✓

** Proof of Oakland Resident Offsite Hours on Non-City of Oakland funded projects.
 * If a contractor has shortfall of Oakland resident hours on the Oakland Army Base project, off site hours concurrent to the contract work on the Oakland Army Base will be considered.

(Where ✓ " appears, category must be included)



AT A GLANCE CLOSE-OUT DOCUMENTATION CHART

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PROOF	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	
A	Disadvantaged Worker	✓	✓	✓	✓	✓				✓		✓	✓	✓	✓	
B	Apprenticeship	✓	✓	✓	✓	✓				✓		✓	✓	✓	✓	
C	Oakland Residency	✓	✓	✓	✓	✓				✓				✓	✓	
D	Oakland Resident Offsite Hours **	✓	✓	✓	✓	✓	✓	✓		✓	✓			✓	✓	

** Proof of Oakland Resident Offsite Hours on Non-City of Oakland funded projects.

* If a contractor has shortfall of Oakland resident hours on the Oakland Army Base project, off site hours concurrent to the contract work on the Oakland Army Base will be considered.