Q&A Related to the San Francisco Local Hiring Policy for Construction

* Please note that the responses to these questions are intended to provide guidance on the ordinance, but in cases where OEWD has the administrative authority, they may be subject to change.

A. Coverage of Policy

1. Question: What is the effective date of the new local hire ordinance?

Answer: The ordinance will apply to Covered Projects advertised for bids on or after March 25, 2011. For a list of currently-advertised contracts, please refer to the Office of Contract Administration's Bid/Contracts Listing website and the San Francisco Public Utilities Commission website:
http://mission.sfgov.org/OCABidPublication/
http://sfwater.org/msc_main.cfm/MC_ID/15/MSC_ID/374
http://sfwater.org/custom/bid/planlist.cfm/bidtype/1/MC_ID/15/MSC_ID/149
http://sfwater.org/detail.cfm/MC_ID/15/MSC_ID/150/C_ID/4210

2. Question: Are San Francisco Redevelopment Agency (SFRA) projects covered under this ordinance?

Answer: No, the SFRA is a state-funded entity and its projects have their own set of hiring requirements. For information on SFRA's Construction Workforce Policy, please refer to:
http://www.sfredevelopment.org/index.aspx?page=126

3. Question: For City projects, will the Policy be implemented proportional to funding? For example, if there are multiple funding sources (state or federal) and local City funding is 50% for the project, does that drop the local hire requirement to 10% instead of 20%?

Answer: The rules of the funding source will determine whether a project will include a local hiring component. Specific requirements will be set forth in the project bid and contract documents.

4. Question: Will the new Policy apply to consulting services, non-construction work performed by LBE's, or security guard services.? Will the Policy apply to local material suppliers, such as ready-mix concrete, or on-site administrative staff?

Answer: No, the Policy does not apply to the services identified in the question. The Policy applies only to construction work performed under a covered public work or improvement contract awarded under Chapter 6 of the San Francisco Administrative Code.

5. **Question**: Are supervisory hours included as Project Work Hours under the Policy? What about foreman who do not work with tools, are their hours included as Project Work Hours?

Answer: If a contractor is required to capture a supervisor's or foreman's hours through certified payroll in reporting construction hours performed, then those hours will be counted toward the local hire requirement. For further clarification, please contact the Office of Labor Standards Enforcement.

6. **Question**: How does the Policy apply to a Covered Project with an awarded contract amount of $500,000, where the prime contractor self-performs $100,000 of work and subcontractors have subcontracts valued at $100,000 each? Would the subcontractors be excluded from the local hiring requirements because each subcontract is less than $400,000, or would both the prime contractor and subcontractors be required to comply because the total project cost exceeds $400,000?

Answer: The project in the example is a Covered Project because the contract amount exceeds the applicable Threshold Amount ($400,000). The contractor will be responsible for ensuring compliance with the local hiring requirement for Project Work Hours within each trade performed by contractor and all subcontractors. Contractor will be responsible for working with its subcontractors to ensure overall compliance with the local hiring requirement. The City will not enforce the local hiring requirements of the Policy directly against the subcontractors because the subcontract amounts are less than the Threshold Amount.

7. **Question**: If a Covered Project has, for example, 10 subcontractors with subcontracts valued in excess of $400,000, and 30 subcontractors with subcontracts valued at less than $400,000, is the Prime Contractor responsible for overall compliance with the local hiring requirement, or only required to comply with respect to Project Work Hours self-performed by the Prime?

Answer: In this example, the prime contractor will be responsible for overall compliance with the local hiring requirement for Project Work Hours within each trade performed by Prime Contractor and all Subcontractors. The City will have the authority to enforce the local hiring requirements of the Policy directly against those Subcontractors with subcontracts with values in excess of $400,000.

8. **Question**: Can apprenticeship school time be included in project hours?

Answer: No, only the construction trades hours that will be reported on certified payroll can be counted towards project hours.

B. Local Hiring Plan

1. Question: At what point will a contractor need to submit the Local Hiring Plan that is referenced in the ordinance? What will the plan need to do in order to be approved by OEWD?

Answer: If a prime contractor is awarded the contract on a Covered Project that is estimated to cost $1 million or more, then the prime must submit a Local Hiring Plan to OEWD and the awarding department within 15 days from the date of the award. The prime contractor will be responsible for collecting information for the Local Hiring Plan from subcontractors.

All information will be submitted through the City's online project reporting system (currently the Elation Systems). The Local Hiring Plan will be approved if the form is fully completed, and identifies what resources the contractor and its subcontractors will utilize towards meeting the required San Francisco resident hours.

C. Disadvantaged Worker

1. Question: Are there penalties for not meeting the disadvantaged worker goal?

Answer: While the disadvantaged worker participation is a requirement in the ordinance, it is not subject to financial penalties.

2. Question: What household size is being used for this legislation for the purposes of determining disadvantaged worker status?

Answer: The Area Median Income (AMI) is one of the standards for determining disadvantaged worker status. At the time of commencing work, if a worker's household income is less than 80% of the AMI, the worker will be considered disadvantaged. The AMI is derived from the Department of Housing and Urban Development (HUD) and is adjusted for household size. For information about the AMI for San Francisco, please refer to HUD's website: http://www.huduser.org/portal/datasets/il.html

3. Question: Are all of the neighborhoods listed in the description in 6.22(G)(1)(m) currently at an excess of 150% of the City Unemployment rate?

Answer: The neighborhoods listed in the ordinance are examples of distressed neighborhoods in San Francisco, but not all residents of those neighborhoods will be considered a disadvantaged worker. Note that the "rate of unemployment in excess of 150%" criterion applies to census tracts within the City.

4. Question: Can an individual with a household income significantly above AMI who resides in a census tract within the City with a rate of unemployment in excess of 150% of the City unemployment rate qualify as a disadvantaged local hire?

Answer: Yes, if the worker lives in a qualifying census tract or meets at least one of the other disadvantaged criteria listed in the ordinance, he or she will be considered a disadvantaged worker.

5. **Question**: There is potential difficulty in identifying neighborhoods by name only. Are area boundaries clearly and publically identified? Are zip codes applicable?

Answer: In order for a worker to be considered disadvantaged, he or she must meet one of the criteria listed in the ordinance. Being a resident of a particular zip code, by itself, does not necessarily mean that the worker is a disadvantaged resident.

C. Local Resident

1. **Question**: How will workers be verified as San Francisco residents?

Answer: In calculating Project Work Hours for the purposes of the local hiring requirements, OEWD will review certified payroll records submitted to the City's approved certified payroll vendor. The Project Work Hours performed by an employee with a San Francisco address on certified payroll records will be counted towards the local hire requirement.

If a contractor chooses to request a referral of a local resident from CityBuild, that worker will have been certified as a local resident with a City ID Card, or two additional forms of identification. A California Driver's License with a San Francisco address, by itself, will no longer be sufficient in order to qualify for CityBuild referral services.

2. **Question**: What proof of local residency will be required?

Answer: To be referred by the CityBuild Program as a local resident, a worker must provide a City ID Card or 2 forms of identification that demonstrate domicile in San Francisco. The domicile of a person is that place in which his or her habitation is fixed, wherein the person has the intention of remaining, and to which, whenever he or she is absent, the person has the intention of returning. At a given time, a person may have only one domicile.

Some examples of acceptance identification include, but are not limited to, a utility bill, rental agreement, receipt of property tax, voter registration card, or a most recent California personal income tax return. The documents submitted must demonstrate establishment of domicile at least 7 days prior to commencing work on the Covered Project in question. OEWD may request additional information and documentation showing indicia of domicile.

3. **Question**: If a person qualifies as a local resident under the Policy at the start of the project, but relocates outside of San Francisco mid-project, will the person still be considered a local resident under the Policy?

Answer: Local hire participation will be tracked by certified payroll through the City's approved certified payroll vendor. If an employee's address as reported through certified payroll changes to a non-San Francisco address, those hours reported after the change will not be counted towards the local hire requirement.

D. First Source Hiring Program

1. Question: What relationship does "new hire" as defined in the Policy have to the local hiring requirements? What relationship does "core employee" as defined in the Policy have to local hiring requirements?

Answer: For Covered Projects subject to the local hiring requirements of the Policy (Section 6.22(G)), there are no distinctions between "new hire" and "core employee." A contractor must simply meet the local hire requirement, and may draw from several resources – e.g., core employees, re-hires, referrals from CityBuild or CBOs, etc. – to assemble their workforce to meet the local hire requirement.

For San Francisco projects where there are First Source Hiring obligations, but no Section 6.22(G) obligations, a contractor must draw from the CityBuild Referral Program for all new hires. A new hire would be any worker not appearing on a contractor's active payroll records at least 60 of the previous 100 days at the signing of their contract. Examples of projects where this may apply are private First Source construction projects with no City funding, or MTA projects that are primarily federally funded.

E. Projects Outside the Boundaries of San Francisco

1. Question: For projects constructed 70 miles or more beyond the jurisdictional boundary of the City, will the San Francisco local hire percentages required be provided at the time the project is put out to bid?

Answer: Yes. However, the "local" hire percentage for projects constructed 70 miles or more beyond the jurisdictional boundary will be a combination of San Francisco residents, and workers local to the area and the region where the work is located. The awarding department will outline the requirements in the bid and contract documents for the project.

F. Out-of-State Workers

1. Question: Assume a Covered Project constructed in San Francisco with 500 Project Work Hours in a given trade. Under the Policy, 100 Project Work Hours (i.e., 20%) must be performed by San Francisco residents, and 50 of those Hours must be performed by disadvantaged workers. If 400 of the Project Work Hours were instead performed by out-of-state workers, would only 20 Project Work Hours have to be performed by local residents, and of those 20 Hours, only 10 Hours be performed by disadvantaged workers? It would seem that this exclusion of out-of-state worker hours results in an advantage for hiring out-of-state workers.

Answer: Yes. The Policy was written to exclude Project Work Hours performed by out-of-state workers.

G. Off-Ramps

1. Question: Is there a list of specialized trades currently available?

Answer: A list of specialized trades will be made available on OEWD's Local Hire website: http://oewd.org/Workforce_Development-SF_Mandatory_Local_Hire.aspx

2. Question: When will we know if OEWD is successful in entering into direct entry agreements?

Answer: If OEWD successfully enters into a direct entry agreement with any apprenticeship program, it will be posted on OEWD's website and offered as a possible off-ramp resource when a contractor submits a conditional waiver request. To date, there are no direct entry agreements in place.

3. Question: How many apprentices would a contractor have to sponsor in order to avoid penalties?

Answer: If a contractor anticipates they will fall short of the local hiring requirement in a particular trade, then contractor may request a waiver, before any work is performed, by agreeing to sponsor new apprentices into that trade. The number of apprentices will be determined by OEWD based on the anticipated deficiency in hours. Those apprentices would need to work the duration of the covered project.

H. Penalties

1. Question: If penalties are issued, how will it be determined whether the wage should be an apprentice or journeyman wage?

Answer: If a contractor falls short of the mandatory level of San Francisco resident participation in a particular trade, the penalty will be equal to journeyman wages of that trade for each hour by which the contractor fell short. If a contractor falls short of the requirement of 50% of apprentice hours to be performed by San Francisco residents, the penalty will be equal to the average apprentice wage for each hour in which the contractor is deficient.