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May 6, 2026

SUBJECT: COUNCIL FILE 26-0489

The Bureau of Contract Administration (BCA) appreciates the time and effort that went into developing the recommendations contained in the Charter Reform Commission's (CRC) report. The BCA welcomes the opportunity to provide comments to the Rules, Elections and Intergovernmental Relations Committee, specifically as it relates to the acceptance of completed projects in Public Works.

CRC Recommendation

Currently, Charter 381(j) empowers the Board of Public Works to accept completed projects. The CRC recommendations include language that would remove this power from the Board of Public Works and assign it to the Director of Public Works. It also tasks the Director of Public Works with making recommendations on the long-term maintenance plan for the project.

Bureau's Role in Project Acceptance

When construction contracts are awarded in Public Works, BCA is responsible for ensuring that the contractor meets the requirements and expectations that were set forth when the contract was awarded. As such, BCA makes a recommendation to the Board about the acceptance of every construction contract awarded by the Board. This could include the satisfactory construction and delivery of the capital improvement in accordance with the plans and specifications, as well as compliance with pledged subcontractor utilization at the time of award and targeted hiring requirements as outlined in the Public Works Project Labor Agreement and Public Infrastructure Stabilization ordinance.

Project Labor Agreement Compliance - Liquidated Damages

For projects where a Project Labor Agreement is applicable, contractors must meet targeted hiring requirements of 30% Local Workers, 10% Transitional Workers, and 50% Local Apprentice Workers. The Department of Public Works Infrastructure Stabilization Policy (Policy) outlines a process for BCA to monitor the contractor's performance in comparison with these targets, conduct progress meetings with the contractor, and review documents submitted by the contractor to determine efforts made to meet these targets.



If the contractor does not meet those targets, they may be assessed Liquidated Damages for non-compliance. In accordance with Section 8.4 of the Policy, the Liquidated Damage calculation is equal to the average journeyman project wage for each hour the PLA Covered Project fell short of the targeted hiring, or \$500 per day, whichever is greater. The Liquidated Damages calculations are conducted separately, for each targeted hiring requirement in which the Prime Contractor did not achieve.

However, based on a review of documented efforts from the contractor, the BCA can make recommendations to the Board to assess either a full or reduced amount of Liquidated Damages. In accordance with Section 8.5 of the Policy, the Board is authorized to determine whether to assess Liquidated Damages against the Prime Contractor after an appeal is heard before the Board. The Board will allow the Prime Contractor to provide evidence that it made all the showings required in Section VII of the Policy.

Business Inclusion Program - Potential Penalties

As part of the contract award process, BCA performs a review of the contractor's compliance with the City's Business Inclusion Program (BIP). This includes reviewing the Prime Contractor's bid by verifying the bid-listed Subcontractors and their pledged dollar amounts by cross-referencing the bid listed amounts against the Subcontractor quotes; confirming that the Prime Contractor reached out to all available certified firms for each scope of work selected subcontracted scope of work through the Regional Alliance Marketplace for Procurement (RAMP) portal; and ensuring that the Prime Contractor negotiated with each interested subcontractor in good faith through submission of the BIP Summary sheet through the RAMP.

It serves as the basis for how the Prime Contractor selects the subcontractors that it pledges to utilize as part of its contract award. BCA reviews the utilization of subcontractors throughout the course of the project and verifies subcontracted amounts at the conclusion of the project. If the Prime Contractor deviates from their original plan, BCA may recommend potential penalties for the following violations:

- Unauthorized subcontractor substitution - Underutilization; not properly substituted subcontractors.
- Public Contract Code violations or similar - Utilizing a subcontractor that should have been bid-listed but was not.

Each violation would result in BCA's recommendation to penalize ten (10) percent of the subcontract amount for each subcontractor with the approval of the Board of Public Works.

Open Access, Transparency, and Public Hearings

While BCA is tasked with making recommendations on these issues, the Board has the discretion and final decision on whether or not to assess these financial penalties. The Liquidated Damages or penalties can be over \$100,000 in some cases, or even over \$1,000,000. These decisions have significant financial impact to businesses doing work with the City.

In every instance, BCA makes every effort to communicate with the contractor and provides them with an opportunity to provide backup documentation that supports their position or contention with the penalties. As a matter of due process, it would be most meaningful to have the final



decision on these matters made in a public hearing. It provides access and transparency for the business and the public on issues that impact the community as it relates to local and transitional worker opportunities as well as minority, women, and small business opportunities.

Bureau's Proposed Change

Allow the Board of Public Works to retain the power of acceptance of completed projects and contracts.

If you have any questions, please contact Raoul Mendoza, at raoul.mendoza@lacity.org.

Sincerely,



JOHN L. REAMER, JR., Director
Bureau of Contract Administration

20260506 BCA Comments on Charter Reform Recommendations

