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Project Stabilization Agreement

Frequently Asked Questions

1. **What happens if a contractor already has a benefit program in place? How does it impact PSA requirements?**

Section 5.2(b) of the Project Stabilization Agreement (PSA) states a contractor need not pay into the benefits program directed by the union's Schedule A for his core workforce **if** he can demonstrate that the benefits he provides is equal to or better than the benefits provided by the Schedule A. The PSA Administrator shall make such determination. In making its determination, the PSA Administrator will consider the following factors:

* 1. Whether the contractor's benefit program applies to all of its employees, not just those performing on the PSA covered project
	2. Whether the contractor's benefit program applies to the core employee for all work performed for the contractor, not just PSA covered work
	3. Whether the health benefits cover the worker and the worker's family and includes vision and dental
	4. Whether the contractor makes an actual contribution to a contractor-sponsored retirement program for the benefit of the employee
1. **What happens if someone lives in Pasadena but is signed on to a union hall in San Diego, which will count as their residence?**

Section 3.5 of the PSA states that residents of San Diego County, the San Diego Unified School District (SDUSD) and targeted ZIP codes must be given *first priority* under the PSA. To be considered a resident, one must have resided in SDUSD or the County for one-hundred eighty (180) days prior to the award of Project Work; post office boxes will not be accepted.

1. **What are the Target ZIP Codes?**

The eleven (11) target ZIP codes from which 35% of the local workforce pool should come are as follows: 92101 , 92102, 92104, 92105, 92111, 92113, 92114, 92115, 92116, 92117 and 92139.

1. **Are subcontractors and Prime Contractors/GeneraI Contractors required to keep track of workers' residencies? Will resumes need to be collected from all workers?**

Yes, California Labor Laws already requires prime and subcontractors to certify under penalty of perjury that the worker residences they provide on Certified Payroll Reports are true and correct. Resumes are not required to be collected by the PSA.

1. **Will manufacturers from outside San Diego be able to bid/subcontract Prop S projects given San Diego residency requirement?**

Yes, with a couple of clarifications.

* **First**, under Section 2.3(e) off-site manufacture and handling of materials, equipment or machinery are exempt from the PSA.
* **Second**, the PSA does not require contractors or their workers to be residents of San Diego.
* **Third**, the discussion in section 3.5 of the PSA covers residency goals, not requirements, for workers assigned to PSA covered work
1. **Will contractors' performance (with residency/ZlP code goals) on previous projects be used for selection in future bids/evaluations?**

Not at this time.

Currently, SDUSD does not employ a system for considering prior contractor performance on SDUSD work in the evaluation of bids.

1. **What will happen if a Prime Contractor/GeneraI Contractor is bidding a contract and a subcontractor chooses NOT to sign a Letter of Assent? Will they have to be signed at bid time?**

Section 2.4(b) of the PSA states that the contractor and all subcontractors, regardless of tier, shall sign a Letter of Assent prior to the commencement of work.

Currently, SDUSD plans to have prime contractors include Letters of Assent at the time of bid. Listed subs must submit Letters of Assent to SDUSD as a condition of their contract with the prime contractor. Lower tier subs not listed must submit a signed Letter of Assent prior to commencement of work.

If a subcontractor refuses to sign a Letter of Assent, such sub will be in violation of its contract with the general contractor and, thus, be ineligible to perform work on the PSA covered project. SDUSD suggests requesting subcontractors' letters prior to bid time.

1. **Do all subs, from all tier levels, have to sign a Letter of Assent?**

Yes. See question 7.

1. **Will union halls be referring workers only from San Diego?**

Yes, when such workers are available. Section 3.5(a) of the PSA sets a goal that 100% of union referrals be residents of San Diego County and that 70% of those referrals reside within the SDUSD's boundaries. Unions are required to prepare monthly progress reports on the number of SDUSD applicants that have been contacted, recruited and referred to PSA covered work.

1. **Will a Construction Management Multiple Prime procurement strategy create additional Prop S projects under the $1 million threshold?**

No. Section 2.2(b) of the PSA explicitly states that the PSA applies to all "prime multi-trade" construction contracts "the total of which" exceeds $1 million. Also, Section 2.2(c) defines a "project" to which the PSA applies by the amount determined by SDUSD engineer's estimate prior to the submittal of the project to the Division of State Architect. In short, the project qualifies for coverage under the PSA due to its value, not the procurement strategy.

1. **Will subcontractors be notified of compliance/non-compliance of PSA requirements? What stakeholders will be notified?**

Sections 3.5 (employment of SDUSD Residents), 3.6 (Core Employees), 5.2 (Benefits), 6.7 (anti-work stoppage enforcement) 8.5 (pre-job conference) 9.2 (SDUSD Rights), 9.4 (Special Equipment, Warranties & Guaranties), 10.1 (Cooperation and Harmony on Site), 10.2 (Processing Grievances) and 11.4 (Notice upon Violation of Law) all cover cases of non-compliance in which SDUSD is obligated to notify the noncompliant party and the prime contractor of noncompliance issues.

1. **Can referrals from the AGC apprenticeship lists be used to acquire workers under the PSA requirements?**

Any apprentice utilized must be enrolled in a California Apprenticeship Council-approved apprenticeship program. To the extent such apprentices are so enrolled, they are eligible to be referred by Unions to PSA covered projects.

1. **Will apprenticeship programs be considered acceptable if they are certified/state approved but NOT joint-labor?**

Yes, the PSA permits apprentices from state-approved programs to work on PSA covered work.

1. **If core employees are residents of San Diego and chosen ZIP codes, but union halls provide labor outside the area, will the Contractor be in compliance if they override union hall referrals as a means to meet "local worker" goals?**

Section 3.5 discusses residency goals for PSA covered projects. While Unions are obligated to give an employment preference to workers who reside in particular ZIP codes and to maintain records of these efforts, there are no residency requirements for PSA covered projects. Section 3.3 requires contractors to utilize the Union's referral procedure. Contractors are not allowed to override this procedure. However, if the Union is unable to refer workers that meet the contractor's specifications (including residency standards), the contractor may utilize core employees or applicants from another other source who do meet the specifications. Please note that achieving local worker goals is not a compliance issue, per se. The PSA does not provide for, nor does SDUSD have a system of consequences for, failing to meet the goals.

1. **Who determines that workers are qualified and will do a good job?**

Section 3.2 of the PSA states that the Contractor shall have the right to determine the competency of its employees and shall have the right to reject any employee referred by a Union so long as such rejection is done in good faith.

1. **Can a contractor hire/fire any number of workers until they reach core employees that are signed on to union lists?**

No. While the Contractor has the right to determine the competency of its employees and has the right to reject any employee referred by a Union, such rejection must be done in good faith. Hiring and firing of union list workers without regard to their qualifications as a means to getting to specific workers is not a good faith practice. The PSA Administrator has the ability to investigate "good faith" violations. Also, fired workers and/or the Union may file a grievance to address this.

**17. Can contractors hire/fire workers because they do not work "as well as" core employees?**

Yes and no. Section 3.2 of the PSA states that the Contractor shall have the right to determine the competency of its employees and shall have the right to reject any employee referred by a Union so long as such rejection is done in good faith. However, hiring and firing of union list workers is not a good faith method as a means to get a contractor's core workers. The contractor will have the opportunity to specify the skill and experience of the workers it requires to the applicable Unions at the mandatory Pre-Job Labor Conference discussed in section 8.5 of the PSA.

1. **Will the AGC's pension fund be considered "equal to or greater than" the Union's?**

Section 5.2(b) of the PSA states a contractor need not pay into the benefits program directed by the union's Schedule A if the PSA Administrator determines the benefits provided are equal to or better than those benefits provided by the Schedule A. Factors that will be considered in the determination will be:

1. Health benefits coverage (e.g. dental & vision included) fully paid by employer
2. Whether the employee (and all employees) receive health benefits when working on private as well as public work projects
3. Whether the employee's family is covered by the health benefits program
4. Whether the employee is guaranteed health coverage despite any pre-existing conditions
5. Whether the employee also receives life insurance benefits
6. **How often will staff be doing site visits?**

Weekly. SDUSD staff will be conducting weekly site visits at a minimum as part of its responsibilities as a State approved Labor Compliance Program. Under section 4.1 "authorized representatives of the Union" shall have access to PSA covered work sites. SDUSD is also considering implementing a site visit system that allows volunteers to observe work in progress on the job site.

1. **Will advertisements and bid notifications indicate which are PSA projects?**

Yes. All advertisements for projects falling under the PSA will be indicated as such.