

San Diego City Council Approves Union-Friendly Citywide Project Labor Agreement Restricting Most City Construction Projects

Article By:

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On January 30, 2024, the San Diego City Council approved an [ordinance](#) implementing Mayor Todd Gloria’s proposal to establish an extensive project labor agreement (“PLA”), which is slated to impose various conditions and restrictions on most City-funded construction projects. Most notably, the PLA establishes conditions of employment and minimum wage requirements, additional safety protocols, and other regulations imposed on contractors and their subcontractors. The PLA also sets goals and introduces incentives for the hiring of certain “Targeted Workers,” which include homeless people, the undereducated, and those that have spent time in jail or prison.

The citywide PLA, one of the first of its kind, will apply to prime contracts and subcontracts for “Covered Projects” (as defined below) bid between July 1, 2024 and the date 7 years after the effective date of the PLA. The “Covered Projects” subject to the PLA include all City-procured construction projects (including rehabilitation, alteration, conversion, extension, maintenance, repair, replacement, or improvement) that are advertised with a City-estimated construction contract value of:

1. At least \$5 million in the first and second years of the ordinance (i.e. July 1, 2024 through June 30, 2026); or
2. More than \$1 million thereafter.

Many cities negotiate project labor arrangements on a project-by-project basis, but this PLA will provide a consistent set of rules for all “Covered Projects” in all of San Diego. Although the PLA will boost wages for construction workers, satisfying one of the City’s priorities, it will also likely increase the cost of City infrastructure projects, which compete with other budget priorities in the City’s annual budget. The City’s projected infrastructure deficit has been reported to be over \$5 billion.[1] Given the scope and breadth of the impositions of the PLA, it is expected that the PLA will also trigger the City’s creation of a new department to ensure compliance with its conditions and regulations.

An unintended consequence of past labor agreements has been to hinder smaller construction groups, often owned by Disadvantaged Businesses, from competing for public works contracts. The PLA states that the City, the San Diego County Building & Construction Trades Council, and the unions will need to coordinate together to ensure that the provisions of the PLA do not “inadvertently

establish impediments to participation” of certain “Disadvantaged Businesses.” **The PLA defines Disadvantage Businesses to include:**

1. A “Disadvantaged Business Enterprise” pursuant to 49 C.F.R section 26.5 that has been certified by either the California Department of Transportation (“Caltrans”) or a Caltrans-approved California certifying agency. A Disadvantage Business Enterprise is defined to include for-profit small businesses where socially and economically disadvantaged owner(s) own at least a 51% interest, and have managerial and operational control of the business operations.
2. A “Minority Business Enterprise” certified by Caltrans, a Caltrans-approved certifying agency or the California Public Utilities Commission (“CPUC”). A Minority Business Enterprise is defined to include for-profit small businesses where minority owner(s) own at least a 51% interest, and have managerial and operational control of the business operations. African Americans, Hispanic Americans, Native Americans, and Asian Pacific Americans, are presumed to be minorities for purposes of the foregoing.
3. A “Woman Business Enterprise” certified by Caltrans, a Caltrans-approved certifying agency or the CPUC. A Woman Business Enterprise is defined to include for-profit small businesses where women owner(s) own at least a 51% interest, and have managerial and operational control of the business operations.
4. A “Small Local Business Enterprises” certified by the City. To be certified as a Small Local Business Enterprises, the business must (i) be for-profit, independently owned and operated, not a subsidiary of another business, and not dominant in its field of operation, (ii) have a significant employee presence (25% or more employees must reside in San Diego) and a principal place of business (physical office through which a firm obtains no less than 50% of its overall customer/sales dollars) in San Diego, (iii) be fully operational for 12 consecutive months, and (iv) have average gross annual receipts in the last 3 fiscal years that does not exceed the caps outlined [here](#) (\$2M to \$5M depending on the industry).
5. An “Emerging Local Business Enterprises,” certified by the City. To be certified as an Emerging Local Business Enterprises, the business must satisfy the Small Local Business Enterprise requirements outlined above, and also have average gross annual receipts in the last 3 fiscal years that does not exceed the caps outlined [here](#) (\$1M to \$2.75M depending on the industry).

For Disadvantages Businesses referenced in the PLA, the PLA also includes express carve-out provisions that allow Disadvantage Businesses to avoid some of the PLA requirements, including (i) the “Core Employee” hiring obligations imposed on other contractors (see Section 4.6(b) of the [PLA](#)) for 5 of its employees, and (ii) the obligation to pay fringe benefits and other required contractor contributions on behalf of their employees to employee benefit funds (see Section 6.2(b) of the [PLA](#)) if the subcontract for the Disadvantaged Business is under \$500,000.

The PLA obligations will be implemented for bids commencing on July 1, 2024. For the first 2 years, the PLA obligations will only be imposed on Covered Projects with estimated construction contract values of at least \$5 million. This two year “ramp up” period is aimed at giving businesses an opportunity to adapt to the PLA requirements. The threshold drops to \$1 million after the initial two year “ramp up” period, which will expand the number of City-funded construction projects that will be affected by the PLA moving forward. It is important for construction businesses, developers, and others in the industry who bid on City public works contracts to become familiar with its requirements.

FOOTNOTES

[1] [San Diego's infrastructure funding gap surges past \\$5 billion – Del Mar Times](#)

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