



## **Board Policy No. 410**

### **Bus Rapid Transit Construction Careers Policy**

**ADOPTED:** 10/2013

**RECENT AMENDMENT:** 9/27/2017

**SEE ALSO:** N/A

**SUBJECT CATEGORY:** SECTION 400, OPERATIONS

**SUBSECTION:** BUS RAPID TRANSIT

**CONTROL DEPARTMENT:** GENERAL COUNSEL

#### **I. PURPOSE**

The Alameda-Contra Costa Transit District (“AC Transit”) operates a bus system serving Alameda and Contra Costa counties, and owned by the public. AC Transit’s Bus Rapid Transit project (“BRT Project”), scheduled to commence operation in 2019, will generate substantial employment and business opportunities through the construction phase.

For purposes of the BRT Project, AC Transit desires to implement targeted hiring strategies focused on areas of high unemployment, and on individuals with barriers to employment. These objectives will be advanced by targeting the BRT Project’s construction employment and training opportunities in ways calculated (i) to mitigate the harms caused by geographically-concentrated poverty, (ii) to fight unemployment and underemployment in vulnerable populations and neighborhoods, including populations with barriers to employment, (iii) to advance the skills of targeted workers and enable workers to earn wages that will assist them in moving out of poverty, (iv) to provide links to career paths for targeted workers, and (v) to facilitate rapid completion of the BRT Project.

These objectives will also be advanced, and the proprietary interests of AC Transit will be protected, by avoidance of labor misunderstandings, grievances and conflicts on the BRT Project. Project labor agreements minimize the possibilities for such controversies, thereby promoting project cost containment, timely and economical project completion. Project labor agreements can also facilitate efforts to target construction job opportunities as described above. AC Transit therefore intends to implement this Policy through negotiation of a project labor agreement that facilitates achievement of the goals of this Policy and assures labor peace on the BRT Project.

Capitalized terms herein shall have the definitions set forth in Section II, below.

#### **II. DEFINITIONS**

The following capitalized terms shall have the following meanings in this Policy. These definitions encompass both the singular and plural form.

**“AC Transit”** means the Alameda-Contra Costa Transit District.

**“Apprentice”** means an individual registered and participating in an apprenticeship program approved by the US Department of Labor (DOL) and/or California Division of Apprenticeship Standards.

**“BRT Project”** means the AC Transit Bus Rapid Transit Project, as described in the “Record of Decision on the East Bay Bus Rapid Transit Project in Alameda County, California,” issued by the Federal Transit Administration on June 8, 2012, including attachments.

**“Building Trades Council”** means the Building and Construction Trades Council of Alameda County, AFL-CIO.

**“Chronic Unemployment”** means unemployment as defined by the U.S. Bureau of Labor Statistics and lasting 27 weeks or longer.

**“Construction Contract”** means a contract to perform construction work on the BRT Project.

**“Contractor/Subcontractor/Employer” or “C/S/E”** means any individual firm, partnership or corporation, or combination thereof, including joint ventures, which is an independent business enterprise and which has entered into a contract with AC Transit, the Prime Contractor, or another C/S/E, subcontractor, or owner/operators of any tier, with respect to the construction of any part of the BRT Project.

**“Criminal Justice System Involvement”** means direct involvement with the criminal justice system through having an arrest record, or indirect involvement through affiliation or residency in an area with high levels of gang activity as identified/verified by a law enforcement agency.

**“Disadvantaged Worker”** means an individual who, prior to commencing work on the BRT Project, is domiciled in an Economically Disadvantaged Area and faces at least two of the following barriers to employment: (1) being homeless; (2) being a custodial single parent; (3) receiving public assistance; (4) having a criminal record or other Criminal Justice System Involvement; (5) suffering from Chronic Unemployment; (6) emancipated from the foster care system; or (7) being a veteran of the U.S. military.

**“Economically Disadvantaged Area”** means a zip code that includes a census tract or portion thereof in which the median annual household income is less than \$40,000 per year, as measured and reported by the U.S. Census Bureau in the 2010 U.S. Census and as updated upon the U.S. Census Bureau issuing updated Median Annual Household Income data by census tract in the American Community Survey.

**“Employment Hiring Plan”** means a plan presented by a C/S/E to AC Transit, requiring approval by AC Transit’s General Manager or his or her designee prior to commencement of performance of Project Work, as described in Section III.4 of this Policy.

**“Alternative Referral Source”** means an independent third-party individual, entity or employee with approved by AC Transit as having the capacity to promptly refer Targeted Workers to C/S/Es.

**“Letter of Assent”** means the document that formally binds each C/S/E to adherence to all the forms, requirements and conditions of the PLA.

**“Local Resident”** shall mean an individual domiciled in either the City of Oakland or the City of San Leandro.

**“Policy”** means this Construction Careers Policy for the BRT Project. This Policy shall govern BRT Project construction contracts, under terms set forth herein.

**“Prime Contract”** means a contract awarded by AC Transit for construction of Project Work.

**“Prime Contractor”** means a C/S/E that has entered into a Prime Contract.

**“Project Labor Agreement”** or **“PLA”** means an agreement regarding construction work on the Project and entered into by AC Transit, the Building Trades Council, and affiliated construction trade unions, providing labor peace commitments, governing certain working conditions, and facilitating satisfaction of Targeted Hiring Requirements.

**“Project Work”** means construction work performed in the construction of the BRT Project. AC Transit reserves the right to designate scope of construction work at all times.

**“Reporting Period”** means the monthly reporting period for measuring the compliance of a Prime Contractor with Targeted Hiring Requirements. These monthly reporting periods will continue until construction of the BRT Project has been completed.

**“Targeted Hiring Requirements”** means the requirements set forth in Section III.B.3 of this Policy.

**“Targeted Worker”** shall mean a worker in a category set forth in the Targeted Hiring Requirements.

**“Union”** means a construction trade union that executes a PLA.

### III. COVERAGE OF PROJECT

- A. Except as provided otherwise herein, this Policy applies to all BRT-related construction contracts.
- B. AC Transit shall modify or not enforce any aspect of the Policy in accordance with a valid and binding instruction from the U.S. Department of Transportation.
  1. Implementation
    - a. All Requests for Proposal/Invitations for Bid specifications for the BRT Project shall require all C/S/Es submitting bids or proposals to agree to the terms of this Policy and any PLA. All references in this Policy to C/S/Es’ responsibilities under a PLA are not applicable to C/S/E’s falling under any DBE exemption provision of a PLA.

- b. All Prime Contracts shall include a provision obligating all C/S/Es to comply with the terms of this Policy through incorporation into Construction Contracts, and with any PLA through a Letter of Assent to AC Transit.
  - c. The Prime Contract shall include provisions establishing liquidated damages amounts as described in Section III.B.5.a of this Policy, enforceable by AC Transit in its sole discretion.
2. Exclusions and/or Modifications
- a. This Policy shall only apply to Construction Contracts, as defined in Section II (Definition of Terms), subject to such limitation as set forth herein.
  - b. This Policy shall not apply to, or impact in any way, service contracts or operation, inspection or maintenance contracts entered into by AC Transit including, but not limited to, such contracts relating to the BRT Project, services provided at any AC Transit facility or building, and/or the operation or maintenance of any AC Transit-owned or AC Transit-operated facilities or buildings.
  - c. This Policy shall not apply to a C/S/E's non-manual employees, including, but not limited to, superintendents, supervisors, staff engineers, quality control and quality assurance personnel, time keepers, mail carriers, clerk, office workers, messengers, guards, safety personnel, emergency medical and first aid technicians, and other engineering, administrative, supervisory, and management employees.
  - d. This Policy shall not apply to material suppliers of raw materials, manufactured products, offsite hauling or delivery by any means of material, supplies, or equipment required to any point of delivery, except an offsite prefabrication facility dedicated solely to Project Work.
  - e. This Policy shall not apply to officers and employees of AC Transit, nor shall it apply to work performed by or on behalf of other governmental entities and public utilities.
  - f. This Policy shall not apply to the work of persons, firms and other entities that perform consulting, planning, scheduling, design, environmental, geological, management, or other supervisory services on any AC Transit project including, but not limited to, consultants, engineers, architects, geologists, construction managers, and other professionals hired by AC Transit or any other governmental entity.
  - g. This Policy shall not apply to the common division of work recognized through local practice for systems integration and testing, as-built documentation, including, but not limited to, those items excluded by the National Electrical Code (NFPA70) identified projects as "Not Covered" under Article 90.

- h. The provisions of this Policy shall not be applicable where prohibited by federal or state law, or where the application would violate or be inconsistent with the terms and conditions of a grant or a contract with an agency of the United States or the State of California, or the valid instructions of an authorized representative of any of these agencies with respect to any grant or contract. If enforcement of any provision of this Policy is enjoined by any court of competent jurisdiction, the remaining provisions shall remain in full force and effect.

### 3. Targeted Hiring

- a. Each Prime Contractor and its C/S/Es shall strive to ensure that at least 20% of all hours of Project Work will be performed by apprentices, but the hours performed by apprentices in each individual craft shall not exceed the ratio to journeyman established by the applicable craft union's approved apprenticeship standards. Disadvantaged Workers are targeted to perform 25% of all apprenticeship hours worked on the BRT Project.
- b. Each Prime Contractor and its C/S/Es shall comply with U.S. Executive Order 11246 and all implementing regulations, as amended from time to time, including satisfaction of hiring goals for minorities and women.
- c. Each Prime Contractor and its C/S/Es are required to attempt to employ Local Residents for at least 50% of all hours of Project Work, on a craft by craft basis, through procedures including requests for Local Residents from union hiring halls and Alternative Referral Sources. Liquidated damages SHALL be assessed for failure to satisfy the percentage goal for hiring of Local Residents except in instances where the contractor has demonstrated to the District's satisfaction good faith effort to satisfy the goal.

Contractors shall receive full credit toward the Local Resident hiring goal by employing Oakland or San Leandro residents on other construction projects performed by the Contractor during the term of the Contractor's BRT construction work. In order to receive such credit, the Contractor must submit certified payrolls and a Contractor Credit Request Form to the District's Contracts Compliance Department. **NO CREDIT FOR OFF-SITE WORK SHALL BE GRANTED UNLESS THE CONTRACTOR HAS DEMONSTRATED GOOD-FAITH EFFORT TO SATISFY THE LOCAL HIRE GOAL ON THE BRT PROJECT.** Off-site project work hours shall not be calculated in a manner that increases the total number of project work hours.

- d. Apprentice Sponsorship Requirements. In each calendar year, for each twenty thousand (20,000) hours of Project Work performed by a Prime Contractor and its C/S/Es, such Prime Contractor and/or any of its C/S/Es shall sponsor one or more Disadvantaged Workers as a newly enrolled apprentice, and employ such Disadvantaged Worker(s) for an aggregate total of at least one thousand hours of

Project Work and/or construction work on other projects during the term of the Prime Contractor's Project Work.

- e. Contractor Procedures. C/S/Es shall undertake the following steps in the following order, in an effort to retain Targeted Workers.

Step One: Utilize the C/S/E's discretion to assign to perform Project Work any current employees who are Targeted Workers;

Step Two: If the C/S/E utilizes a Union hiring hall to retain workers, utilize name call, rehire, or similar procedures in the relevant collective bargaining agreement to request particular individuals who have been identified as Targeted Workers;

Step Three: If the Contractor utilizes a Union hiring hall to retain workers, request that the hiring hall refer Targeted Workers;

Step Four: If the above steps have not enabled satisfaction of the percentage requirements set forth in Section III.B.3 of this Policy related to hiring of Targeted Workers, request referral of needed categories of workers from an Alternative Referral Source;

Step Five: Fairly consider workers that have been referred by an Alternative Referral Source within three (3) business days of request therefor.

#### 4. Compliance

AC Transit, in collaboration with its authorized representatives shall determine whether a Prime Contractor and its C/S/Es have complied with the requirements of this Policy and any PLA. A Prime Contractor is ultimately responsible for it and its C/S/Es' compliance with Policy and PLA requirements.

- a. If, after taking into account all hours of Project Work performed under a Prime Contract up to that point in time of the Reporting Period, the Targeted Hiring Requirements have been satisfied, then the Prime Contractor and its C/S/Es working on that Project shall be deemed to be in compliance.
- b. If the Targeted Hiring Requirements have not been satisfied for the BRT Project for a Reporting Period, the Prime Contractor nonetheless may be deemed to be in compliance if it demonstrates both (a) that it and each of its C/S/Es have complied with all other requirements of the PLA and this Policy, and (b) that it and each C/S/E have either (i) satisfied the Targeted Hiring Requirements with regard to the Project Work that it has performed or (ii) satisfactorily demonstrated the following:

- i. Adherence to procedures contained in its Employment Hiring Plan as approved by AC Transit.
  - ii. Requests to Unions, through written requests, of sufficient numbers of Targeted Workers to meet the percentages set forth in the Targeted Hiring Requirements for that C/S/E's portion of Project Work.
  - iii. Documented contact with alternative referral sources in each instance when the relevant Union did not refer qualified Targeted Workers within the 48 hours following the C/S/E's request.
  - iv. The C/S/E's fair consideration of any Targeted Worker subsequently referred by Alternative Referral Sources.
- c. Accurate records documenting the C/S/E's compliance efforts include (but are not limited to) the following:
- i. A listing by name and address of all recruitment sources contacted by the C/S/E;
  - ii. The date of the recruitment contact and the identity of the person contacted, the trade and classification and number of hire referrals requested;
  - iii. The number of Targeted Worker hires made as a result of the contact;
  - iv. The identity and address of the worker(s) hired pursuant to the contact;
  - v. Documentation when a referral was not hired (reason for non-hire) and/or premature termination.

## 5. Enforcement

- a. Liquidated Damages. Each Prime Contractor agrees to the following:
  - i. The Prime Contractor and its C/S/Es' commitment to comply with the requirements this Policy and any PLA are material elements of the Prime Contract.
  - ii. The Prime Contractor will be liable to AC Transit for Liquidated Damages as provided in this Section.
  - iii. The failure of the Prime Contractor and its C/S/Es to comply with the requirements of this Policy will cause harm to AC Transit and the public which is significant and substantial but extremely difficult to quantify.

- iv. Due to the difficulty of estimation of damages for violation(s) of requirements of this Policy, the Prime Contractor agrees to pay liquidated damages in amounts as follows:
  - a) The Prime Contractor shall pay liquidated damages equal to the average journeyman wage on the BRT Project for each hour the BRT Project fell short of satisfaction of the Targeted Hiring Requirements.
  - b) If the Prime Contractor is out of compliance with the Targeted Hiring Requirements during any Reporting Period, the Prime Contractor shall meet with AC Transit to develop a plan for compliance. The Prime Contractor has until the next Reporting Period to effectuate compliance, or Liquidated Damages shall be withheld from progress payments.
  - c) Before Liquidated Damages are assessed, the Prime Contractor shall be notified of the proposed Liquidated Damages and served with a summary of the information upon which the Liquidated Damages are based.
  - d) Liquidated Damages shall be withheld from all subsequent monthly progress payment request(s) as disputed funds until such time as Prime Contractor is found to be in compliance, or the relevant Prime Contract is terminated or completed.
  - e) Should the relevant Prime Contract be terminated or completed before the Prime Contractor is found to be in compliance, any additional Liquidated Damages shall be withheld from the Prime Contractor's retention payment.

b. Liquidated Damages Appeal

- i. The Prime Contractor may appeal the assessment of Liquidated Damages before AC Transit's General Manager. Prior to the hearing, the Prime Contractor shall be provided a summary of the information upon which the recommendation assessment is based.
- ii. The Prime Contractor must request an appeal in writing within 10 calendar days of receipt of the Liquidated Damages assessment summary. At the hearing, the Prime Contractor will be allowed to provide evidence that it has made all of the showings required under Section III.B.4.b of this Policy. Failure to submit a written request for an appeal within the time frame stipulated in this Section will be deemed a waiver of the right to appeal and the recommendation for assessment of Liquidated Damages will be implemented.

c. Termination

Consistent, substantial violations of this Policy by any Prime Contractor may result in contract termination.

#### 6. Special Limited Purpose Committee

The District's General Manager or his or her designee will appoint a Special Limited Purpose Committee to (a) assist AC Transit with compliance with this Policy and (b) make recommendations to AC Transit related to implementation of the Policy. The Special Limited Purpose Committee will consist of one San Leandro community representative, one Oakland community representative, one construction trades union representative, one AC Transit representative and one C/S/E representative. At the conclusion of each Reporting Period, the Committee may review any compliance information provided by C/S/Es to AC Transit. In the event that AC Transit or another governmental agency having jurisdiction over the subject matter of this Policy deems a C/S/E to be out of compliance with the Policy, that C/S/E will meet with AC Transit and the Special Limited Purpose Committee (unless otherwise directed by AC Transit) to discuss Policy implementation issues and challenges to facilitate future compliance. The committee may also recommend changes to facilitate compliance, and AC Transit will notify the committee not less than 30 days before the AC Transit board formally considers any change to the Policy.

#### 7. Workforce Development Fund

If granted prior approval by the BRT Project's federal funding sources, AC Transit will require each C/S/E to contribute \$0.10 per hour of Project Work to a workforce development fund administered by AC Transit with the advice of the Special Limited Purpose Committee. AC Transit will ensure that expenditures from the fund are used exclusively to train and refer for employment on the Project workers who are either Disadvantaged Workers or are in a category designated for employment and training efforts by United States Executive Order 11246 and its implementing regulations, as amended from time to time.

### IV. RESPONSIBILITIES

#### A. AC Transit Responsibilities:

AC Transit or its designee shall ensure that the following responsibilities are met for the BRT Project:

1. AC Transit shall ensure that each Construction Contract includes the detailed requirements of this Policy and any PLA, as required terms for the Prime Contractor and other C/S/Es.
2. If a PLA is executed, AC Transit shall collect a Letter of Assent from each C/S/E and ensure that the letters are distributed to all required parties.
3. AC Transit shall review, approve or disapprove EHP submissions prior to a C/S/E's estimated start of work. Approval of a C/S/E to work on the BRT Project is contingent upon approval of a C/S/E's EHP.

4. AC Transit shall monitor and enforce the requirements of the PLA and this Policy, and shall take compliance action where appropriate.
5. AC Transit shall assess Liquidated Damages in accordance with Section III.B.5.a of this Policy.

B. C/S/E Responsibilities:

Each Prime Contractor and all other C/S/Es shall satisfy the following responsibilities, in addition to other responsibilities set forth in this Policy:

1. The Prime Contractor shall ensure that it and each C/S/E submits an EHP to AC Transit for approval by AC Transit project manager or his/her designee, at least 20 business days prior to starting their work on the BRT Project. Each C/S/E shall include in its EHP a description of how it will meet the Targeted Hiring Requirements set forth in the PLA and this Policy. No C/S/E shall be approved to work on the BRT Project without an approved EHP.
2. The Prime Contractor shall read and understand the requirements of this Policy and any PLA, and shall acknowledge in writing, in a separately-initialed portion of the Prime Contract, such understanding and its commitment to comply with requirements of this Policy and any PLA.
3. The Prime Contractor shall sign and submit their Letters of Assent prior to the start of work. No C/S/E shall be approved to work on the BRT Project without submitting a signed Letter of Assent.
4. Prior to start of work on the BRT Project, the Prime Contractor shall recommend an Alternative Referral Source for approval by AC Transit. The Prime Contractor shall provide documentation of Alternative Referral Sources' qualifications, which shall include the ability to verify the status of Disadvantaged Workers for purposes of this Policy, to AC Transit within 10 days of request by AC Transit. Upon AC Transit's approval of its Alternative Referral Source, the Prime Contractor shall ensure that its C/S/E's know Alternative Referral Sources and understand the Alternative Referral Sources' role. The Prime Contractor and its C/S/Es shall coordinate with Alternative Referral Sources for services to support their efforts in meeting the Targeted Hiring Requirements as described in Section III.B.3 of this Policy.
5. Each C/S/E shall conduct a pre-job conference with any affected Unions and the Building Trades Council prior to commencing work. The C/S/E shall notify the Building Trades Council ten days in advance of all such conferences. All work assignments should be disclosed by the C/S/E at a pre-job conference held in accordance with industry practice. Any formal jurisdictional dispute raised through a PLA must be raised at the pre-job conference upon disclosure of the work assignments. Should there be any formal

jurisdictional dispute raised, the Prime Contractor shall be promptly notified. If the C/S/E intends to change the work assignment after the pre-job conference or to make an assignment of work not previously known, the C/S/E must notify the affected Unions prior to the commencement of Project Work.

6. The Prime Contractor and C/S/Es shall request workers in writing from affected Union(s) and (if necessary to meet Targeted Hiring Requirements) Alternative Referral Sources.
7. The Prime Contractor and its C/S/Es shall maintain proof of transmittal of the written requests for workers to relevant Union hiring halls and Alternative Referral Sources. Upon request by AC Transit, or its designated representative, copies shall be provided within 10 calendar days of request.
8. The Prime Contractor and its C/S/Es shall make available to AC Transit, or its designated representatives, records and information that AC Transit deems relevant to monitoring and enforcement of the provisions of any PLA and this Policy.
9. The Prime Contractor and its C/S/Es shall cooperate fully and promptly with any inquiry or investigation AC Transit or its designated representatives deem necessary in order to monitor compliance with the provisions of any PLA and this Policy.
10. The Prime Contractor and its C/S/Es shall submit to AC Transit a verified statement of the number of journeypersons and apprentices who worked on the BRT Project, their classifications and the hours worked (Per California Labor Code 1777.5(e)) within 60 calendar days after concluding work on the BRT Project.

C. Union Responsibilities:

AC Transit shall ensure that any PLA includes the following commitments from Unions:

1. The Unions shall ensure that its dispatchers properly process written requests for Targeted Workers.
2. The Unions shall refer Local Residents and workers targeted under U.S. Executive Order 11246, requested through written requests, on a priority basis to the extent consistent with relevant collective bargaining agreements.
3. The Unions shall facilitate, encourage, and assist Local Residents and Disadvantaged Workers in commencing and progressing in joint labor/management apprenticeship programs.
4. The Unions shall respond to AC Transit requests regarding retention and progress through the apprenticeship program of new apprentices on the BRT Project, to the extent allowed by law.