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Honorable Members of the City Council
c/o Office of the City Clerk
200 N. Spring Street, Room 395
Los Angeles, CA 90012

June 6, 2018

Attention: PLUM Committee

Dear Honorable Members:

**BUREAU OF CONTRACT ADMINISTRATION – AFFORDABLE HOUSING AND
LABOR STANDARDS RELATED TO CITY PLANNING (INITIATIVE ORDINANCE JJJ)
IMPLEMENTATION RECOMMENDATIONS (COUNCIL FILE 16-0684)**

The Bureau of Contract Administration (BCA) submits for your consideration recommendations for an administrative strategy including education, compliance monitoring and enforcement, while bringing forth the challenges that must be addressed and decided in order for the BCA to properly perform the tasks assigned it by the “Affordable Housing and Labor Standards Related to City Planning,” Initiative Ordinance JJJ.

BACKGROUND

On November 8, 2016, the voters of the City of Los Angeles passed Measure JJJ, the Affordable Housing and Labor Standards Related to City Planning Ordinance. Council adopted the measure on December 13, 2016. While the measure required the payment of certain wages to workers employed on construction projects subject to the ordinance, it did not specifically define exactly what those wages should be. It also mandated that a percentage of the work be accomplished by local workers and workers who face certain barriers to employment.

The City’s Bureau of Contract Administration (BCA) has extensive experience in monitoring both the payment of wages and the enforcement of hiring requirements on the City’s public works construction projects. The BCA has been the Designated Administrative Agency (DAA) responsible for ensuring the payment of prevailing wages on City construction projects for over 45 years. In conjunction with this, the BCA administers the City’s Labor Compliance Program; one of only four state certified “Legacy” Labor Compliance Programs in the state. The BCA also has extensive credentials in dealing with targeted hiring goals; similar goals exist in several



City departments' Project Labor Agreements (PLAs). BCA staff were involved with the creation of the City's first PLA, and have been substantially involved with them ever since. Ensuring that contractors are in compliance with those targeted hiring goals is achieved with the use of the City's On-Line Certified Payroll System. That system was created and is maintained by BCA staff. To ensure that contractors understand state and federal prevailing wage requirements – as well as the requirements of the City's PLA – the BCA has offered a free Contractor Assistance Seminar for the past ten years. To date, nearly 1,000 contractors and other stakeholders have attended this seminar.

IMPLEMENTATION

With the passage of Measure JJJ, the BCA has been tasked with the administrative responsibilities for the labor standards required by the measure. These labor standards include both the establishment of an "area wage" along with its monitoring and enforcement, as well as a 30% Local Hire and 10% Transitional Hire requirement on any Affordable Housing projects created under the measure. These targeted hiring goals are identical to two of the goals already monitored and enforced by the BCA in the Department of Public Works PLA.

While Measure JJJ designated the BCA as the agency responsible for its administration, it provided no details as to how that administration was to be accomplished. Fortunately BCA's long history of dealing with requirements that are virtually identical to those mandated by Measure JJJ means that the BCA has the knowledge and experience to successfully take on this task. It has developed policies and procedures for administering both wage and local hire requirements which are not only successful, but are also in compliance with state and federal standards. The Bureau's Labor Compliance Section has a staff that is well-trained and experienced in both fields. Therefore it makes logical sense to adapt the existing policies, procedures and staff to administer Measure JJJ rather than to create a brand new framework for the purpose.

While the measure is specific in regard to the local hire requirements, the wording pertaining to the required wages is somewhat vague. For instance, at one point it refers to "prevailing wage," at another the term "wages that prevail" is used, at another it states the "area standard wage" will be paid.

The creation of a new "area wage" would require considerable staff and time to accomplish. It would entail an extensive wage survey of both the union and non-union contractors working in the Los Angeles area. While such a survey would be expensive and time consuming, it is also unnecessary. The state's Office of Policy, Research and Legislation (OPRL) already conducts similar surveys of our area twice each year. The results of these surveys are regularly published each February and August.

Rather than devote staff time and budget to the creation of a new area standard wage, the BCA proposes to adopt the prevailing wages already created and maintained by the OPRL. Aside from being available to the City at no charge, these wage surveys have the advantage of being

universally known and acknowledged throughout the construction industry in California. The residential nature of the projects to be created under Measure JJJ dictates that the residential prevailing wage rates would be employed wherever possible. On a project that is five stories or above, the state requires that the regular prevailing wage rate – sometimes referred to as the “commercial prevailing wage rate” – be employed. On a project of four stories or less – regardless of whether there is a retail component or not – the residential rate would be employed. Establishing – and advertising – these rates early on would allow all contractors – regardless of whether they are union signatory or not – to compete on a level playing field.

ENFORCEMENT

The important point to be determined is to what degree the BCA will engage in monitoring and enforcement. There are two basic models of monitoring/enforcement: 1) “active” – which generally includes conducting site visits to interview workers as well as performing source document reviews where staff goes to contractors’ offices and audits their records. In this case, the analyst is basically looking for violations; and 2) “passive” – which is more complaint based, where the analyst will receive and file the submitted payrolls without a careful review until a worker – or some interested party – files a complaint.

Because of the local hire and transitional worker requirements of the measure, either method will require *some* review of certified payrolls and other records submitted to the Bureau; however, if the monitoring and enforcement is “active”, that review will be much more comprehensive.

There is a third option for monitoring/enforcement available which was employed successfully by the BCA during the building of Fire Station #15, often referred to as the USC fire station. On this project, the developer opted to have prevailing wage enforcement done by a private company. On a quarterly basis BCA staff would review the findings of the company and approve (or disapprove) those findings. Funds would not be released to the contractor until the BCA gave its approval that the contractor was in compliance. While this method has its advantages, (it would only require minimal involvement on the part of the BCA) it may also have its drawbacks. If the private company tasked with monitoring is lax in the performance of their duties, the BCA will have to take on the work – with the added disadvantage of being three (or more) months behind in addressing the issues.

RESOURCES NEEDED

It is anticipated that the impetus for most of these projects would come – not from the Board of Public Works or some other government office – but from private industry. Placing the creation of new projects in the hands of private industry would mean that these new projects would be much more susceptible to the needs, desires and intentions of contractors. This relinquishing of government control will make it far more difficult to anticipate the level of construction activity and staffing needed at any given time for labor standards administration; therefore it is suggested that the staff assigned to monitor Measure JJJ become a new group within BCA’s regular Labor Compliance Section (LCS). It is anticipated that the necessary administration will require one

(1) Management Analyst. This number may need to be increased depending on the number of projects and the level of monitoring required. There is currently no fee structure in place to fund the Bureau's Measure JJJ compliance activities. We are researching the feasibility of implementing a fee to be paid by the Developer at the time of, and in no event later than, issuance of the first building permit for each project which is subject to Measure JJJ.

Because the City has no control over the project funds, we lack an important element in our ability to bring contractors into compliance. It is imperative that some method be established to withhold funds from a contractor who has violated the labor standards required by the measure. Failure to do so would allow contractors who ignore these requirements to do so with impunity. Perhaps the best way to address this issue would be for BCA to not provide clearance for a Certificate of Occupancy for a project until it has been determined that the project has satisfied the labor requirements of Measure JJJ, or until the Developer has created an Escrow Account in an amount to be determined by the BCA to be sufficient to address the violation. In the event that a Developer/Contractor/Subcontractor creates an Escrow Account, said account must be established in such a way that access to the funds contained therein may only be achieved by consent of both the Developer/ Contractor/Subcontractor who created the account and staff from the BCA. This requirement would need to be mandated through inclusion in the contract documents.

An alternate suggestion would be to require the prime contractor to submit a payment and performance bond on the project. This bond would not be released until the contractor has satisfied the BCA that the labor standards requirements have all been met, and the prime and all subcontractors are in compliance. Whether the City opts to require some sort of security deposit, or a payment and performance bond, Letter of Credit, or some other form of "collateral", it is imperative that the City be able to exercise control over a portion of funds in order to ensure all contractors' compliance with the mandates of Measure JJJ.

TIMELINE TO IMPLEMENT

The lack of specific direction included in Measure JJJ renders it difficult to create a completely accurate timeline for implementation of the measure. However, certain challenges can be acknowledged and addressed.

As mentioned above, the measure directs that the BCA will "...bear administrative responsibilities for the labor standards required...". In order to properly carry out this directive, the Bureau must have some sort of enforcement authority. To accomplish this, the Bureau will need an ordinance that empowers and provides administrative details which will enable the necessary enforcement provisions. These enforcement provisions would include the ability to exact penalties for non-compliance with any and all of the labor standards required by the measure.

The Bureau of Contract Administration has collaborated with multiple city agencies to determine procedures for ensuring labor standards are met in practice. Projects filed with the Department

of City Planning pursuant to Measure JJJ, for certain types of legislative changes, have decreased in numbers of new submittals over the time period the requirements have been effective. As of March 29, 2018, the Department of City Planning has 33 active cases that we can anticipate will eventually need BCA administration and compliance review. The first Measure JJJ project to complete the entitlement process was approved by City Council in the fall of 2017. This project, located at 7132 Amigo in Reseda, has not yet started construction.

CHALLENGES

The language of the measure leaves three main uncertainties which need to be addressed and resolved before the commencement of work on any project under the measure. These issues are:

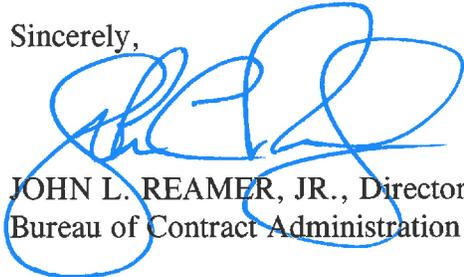
1. How will the prevailing wage and targeted hiring requirements of Measure JJJ be enforced?
2. How will these enforcement efforts be funded?
3. How will BCA be reimbursed for its work?

RECOMMENDATIONS

- Approve the use of the State of California Prevailing Wage Rates as determined by the Office of Policy, Research and Legislation as the appropriate wage rates to be paid to all workers employed on any project awarded subject to Measure JJJ. In lieu of an advertised date, the date of the developer's first submittal of a proposal for a project will be used to ascertain the appropriate prevailing wage determination.
- Establish an ordinance for the administration of any project subject to Measure JJJ. The Bureau has created a set of proposed Rules and Regulations for the requested ordinance that are based on language in the measure that can be used to clarify administrative and enforcement guidelines. These guidelines are consistent with existing policies and procedures employed by the BCA in its enforcement of state and federal prevailing wage rates and the City's Project Labor Agreements. They include the imposition of penalties in the event of non-compliance with any of the labor standards mandated by the measure.
- Authorize the BCA to hire one (1) Management Analyst for the purpose of administering the requirements of Measure JJJ.
- Authorize the BCA to not provide clearance for a Certificate of Occupancy for a project until it has been determined that the project has satisfied the labor requirements of Measure JJJ, or until the Developer has created an Escrow Account in an amount to be determined by the BCA to be

- Require the Developer to submit a fee or other funding mechanism to compensate the Bureau for its administrative and monitoring costs. This submission shall be done at the time of, and in no event later than, issuance of the first building permit for each project which is subject to Measure JJJ.

Sincerely,



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

[d:Council/MeasureJJJ]
cc: JLR/CJ/chrono/