



Agenda Report

December 16, 2019

TO: Honorable Mayor and City Council

FROM: Department of Public Works

SUBJECT: RESOLUTION AUTHORIZING SUBMISSION OF A LABOR COMPLIANCE PROGRAM FOR PROJECTS FINANCED BY PROPOSITION 84 FUNDS

RECOMMENDATION:

It is recommended that the City Council:

1. Acknowledge that the Labor Compliance Program is exempt from the California Environmental Quality Act (CEQA) pursuant to Division 13, Section 21000 et seq. of the Public Resources Code and Title 14, Sections 15061(b)(3) and 15308;
2. Adopt a resolution approving the submittal of a Labor Compliance Program (LCP) for the purpose of implementing a policy relative to the labor compliance provisions of state and federally funded public works contracts. This LCP is applicable to all public works projects that are funded in any part by the Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006 (Proposition 84).

BACKGROUND:

In October 2008, the Department of Public Works (PW) submitted a Proposition 84 grant application for \$1.2 million to the California Department of Water Resources (DWR) for a project identified in the Arroyo Projects portion of the Capital Improvement Program, the Berkshire Creek Area Improvements Project (CIP #77509).

In April 2012, DWR notified PW that it had accepted the grant application and would be awarding a Proposition 84 grant in the amount of \$638,410. As a condition of the grant award, any awarding body that elects to use Proposition 84 funds on a public works project shall establish and enforce an LCP subject to the requirements included in Section 1771.5 of the California Labor Code, or shall contract with a third party to develop and operate an LCP on the City's behalf. The LCP must be submitted to and approved by the Department of Industrial Relations (DIR), and will only be accepted for review if accompanied by a resolution from the Awarding Body indicating adoption of the program.

Section 1771.5 of the California Labor Code provides specific requirements for the content of an LCP. Many of these are already current practice for labor compliance in the City of Pasadena.

These elements include:

- Bid invitations and public works contracts shall contain language concerning the requirements of the California Labor Code.
- Pre-job conferences shall be conducted with the contractor and subcontractors to discuss federal and state labor laws applicable to the contract.
- Project contractors and subcontractors shall maintain and furnish a certified copy of each weekly payroll, including a statement of compliance signed under penalty of perjury.
- Review and, if appropriate, audit payroll records.
- Withhold contract payments when payroll records are delinquent or inadequate.
- Ensure that workers employed by contractors or subcontractors in the execution of federal or state funded public works contracts be paid the state-determined prevailing wage.

However, there are elements included in the LCP requirements which go beyond the City's current labor compliance practices, including;

- Preparation of a comprehensive LCP plan, including specific forms, documents, regulations, labor codes, detailed procedures and operational manuals.
- Outreach activities, including communication with workers and managers at the job sites.
- Ongoing audit management and enforcement actions for project personnel issues.
- Submission of an annual report on prevailing wage monitoring and LCP activities to the state DIR.

After careful consideration of the effort and expertise needed, City staff contracted with a state-approved third party consultant to develop and operate an LCP on the City's behalf, specific to this Proposition 84 funded project. PW has contracted the labor compliance services of Casamar Group, LLC, a sub-contractor to Psomas Consultants, for a Not-to-Exceed amount of \$15,000 which includes preparation of the LCP and DIR application as well as labor compliance services for the duration of the related construction contract. This LCP and Casamar Group's representation of the City before the state DIR will only extend to public works projects funded with Proposition 84 funds. The LCP itself relates only to the construction phase of a Proposition 84 funded project and the City has the option to cancel the LCP upon project completion. A similar Resolution and Program was adopted by Council in February 2007 for a Pasadena Department of Water and Power project partially funded by a Proposition 50 grant.

COUNCIL POLICY CONSIDERATION:

This action is consistent with the City Council's strategic goals to maintain fiscal responsibility and stability and to improve, maintain, and enhance public facilities and

infrastructures. It is also consistent with Pasadena's Municipal Charter Article 10 – Section 1008 which states: "Whenever the City shall have received any money from the Federal Government or from the State of California, or from any agency of either, it may in the expenditure of such money conform to all applicable requirements of Federal or State laws, and of regulations and orders issued under the authority thereof, with respect to the awarding of contracts, hours of labor, employment preferences, and other such matters covered thereby, notwithstanding any provisions of this Charter inconsistent therewith, and any such inconsistent provisions shall yield and be subordinate thereto with respect to such expenditure."

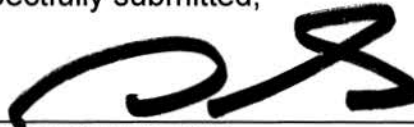
ENVIRONMENTAL ANALYSIS:

CEQA excludes from environmental analysis those actions that are not "projects" as defined by State CEQA Guidelines Section 15378. That section excludes from the Amendments to FY 2018 CIP Budget definition of "project" the creation of government funding mechanisms and fiscal activities which do not yet commit the lead agency to any specific project, and also excludes organizational or administrative governmental activities that do not result in physical changes to the environment. The actions proposed herein are budgetary and part of the City's normal administrative process as it takes early steps to prepare for the possibility of undertaking a project, and therefore they are not yet "projects" as defined by CEQA.

FISCAL IMPACT:

Failure to adopt and submit an LCP with the state's DIR would forfeit the \$638,410 grant provided by Proposition 84. The cost of the LCP-related services has been budgeted under the City's Capital Improvement Program Budget for Project 77509.

Respectfully submitted,



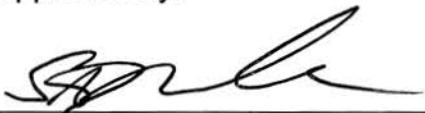
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