

# EXPLORING TARGETED HIRE

An Assessment of Best Practices  
in the Construction Industry

**UCLA Labor Center** | March 2014





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## ABOUT UCLA LABOR CENTER

For almost fifty years, the UCLA Labor Center has created innovative programs that offer a range of educational, research, and public service activities within the university and in the broader community, especially among low-wage and immigrant workers. The Labor Center is a vital resource for research, education, and policy development to help create jobs that are good for workers and their communities, to improve the quality of existing jobs in the low-wage economy, and to strengthen the process of immigrant integration, especially among students and youth.

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# EXECUTIVE SUMMARY

Public construction projects are an expenditure of public tax dollars; as such, public agencies have an opportunity to develop policies for public construction projects to benefit taxpayers with employment and business opportunities. Targeted hire initiatives create institutional mechanisms to increase the participation of socially and economically disadvantaged workers and businesses in public construction projects based on work availability. Many public agencies have used targeted hire to leverage their investment in construction into good jobs for those who need an economic boost. For communities that experience historic disinvestment and chronic un- and underemployment, such work can create lasting stability for families and a pathway to revitalize the local economy.

To better understand the different targeted hire options available to municipalities, the City of Seattle Department of Finance and Administrative Services (FAS) commissioned the University of California, Los Angeles Labor Center to conduct a comparative study of targeted hire initiatives to determine their efficacy and examine the experiences of public agencies in developing and implementing them. The analysis is based on 14 in-depth case studies of project labor agreements and ordinances, as well as a scan of 20 examples of other targeted hire initiatives.

## Types of Targeted Hire Tools

Each targeted hire program is unique, reflecting the specific needs of the different stakeholders involved. Public agencies can choose from an assortment of targeted hire tools to develop an initiative that works best for their projects. They can use contractual tools such as community benefits agreements, project labor agreements, and contract provisions, or institutional structures such as executive orders, resolutions, and ordinances. Another option is to set criteria through responsible contractor standards that contractors must meet in order to bid on public works projects. Lastly, public agencies can choose to leave hiring to the free market and not impose any specific requirement. This allows labor supply and demand trends to dictate employment outcomes. Targeted hire approaches can also be implemented through a combination of policy tools. **Figure 1** provides a brief description of each of the approaches, as well as an overview of their advantages and challenges.

**Figure 1: Targeted Hire Approaches at a Glance**

Mechanism	Description	Advantages	Challenges
Community Benefits Agreement	A community benefits agreement is a legally-binding contract between a broad community coalition and a developer in which community members pledge support for a development in return for community benefits such as targeted hire, living wage jobs, or affordable housing.	<ul style="list-style-type: none"> <li>• High level of community involvement.</li> <li>• Can have multiple stakeholders responsible for ensuring compliance.</li> <li>• Can include PLA-like provisions to help prevent work stoppages and establish dispute resolution mechanisms.</li> <li>• If modeled like a PLA, can influence union dispatch rules with fewer legal risks.</li> </ul>	<ul style="list-style-type: none"> <li>• Susceptible to coalition politics.</li> <li>• Can be highly localized, limiting its impact.</li> <li>• Requires community coalitions to have financial resources to hire attorneys and experts to assist in the negotiation process.</li> </ul>
Contract Provisions	Public agencies or project owners can adopt individual contract specifications or provisions within the contract language that include targeted hire criteria.	<ul style="list-style-type: none"> <li>• Allows tailored boilerplate language.</li> <li>• Contractors are familiar with contract language.</li> <li>• Non-compliance can constitute breach.</li> </ul>	<ul style="list-style-type: none"> <li>• Can be labor intensive and less predictable, as they are individually negotiated each time and only last during the life of the contract.</li> </ul>
Executive Order	The Mayor can issue an executive order directing targeted hire goals for public works or funding training programs.	<ul style="list-style-type: none"> <li>• Simple and fast.</li> <li>• Can influence policy direction of City Council.</li> <li>• Can speed up the process of receiving federal funding.</li> </ul>	<ul style="list-style-type: none"> <li>• Can easily be overturned, modified or eliminated at any point.</li> <li>• Prone to politics - future administrations or change in political will can render the order meaningless.</li> <li>• Additional mechanisms needed to implement policy goals.</li> <li>• Can be difficult to enforce and monitor.</li> <li>• Can forego a stakeholder engagement process.</li> </ul>

<b>Mechanism</b>	<b>Description</b>	<b>Advantages</b>	<b>Challenges</b>
Free Market	This option allows free market forces to direct hiring. Municipalities can elect not to impose any targeted hire policy or procedures and assume that supply and demand conditions will bring in targeted workers.	<ul style="list-style-type: none"> <li>• Requires no additional action from public agency.</li> <li>• Firms can freely compete for contracts.</li> <li>• Does not interfere with hiring practices in place that have already benefited a number of women, people of color and other disadvantaged communities.</li> </ul>	<ul style="list-style-type: none"> <li>• Does not ensure recruitment of targeted workforce.</li> <li>• Does not have monitoring tools and would not require data collection on workforce.</li> <li>• Lacks compliance measures if hiring of targeted workers decreases or remains stagnant.</li> </ul>
Ordinance	Municipality can pass an ordinance that creates targeted hire requirements for public works contracts, establishing goals or requirements for hire and placement of disadvantaged workers onto the projects.	<ul style="list-style-type: none"> <li>• Gives municipality direct management of job inclusion/ placement onto its construction contracts.</li> <li>• It is durable and can endure changes in leadership.</li> <li>• Provides uniform criteria that are clear, transparent and consistent.</li> </ul>	<ul style="list-style-type: none"> <li>• May conflict with the union hiring hall dispatch system.</li> <li>• Their broad reach can also be a disadvantage, as it is difficult for a general ordinance to address the particular opportunities and constraints of individual developments and projects.</li> <li>• Very susceptible to legal challenges.</li> <li>• May require investment into administration of new programs.</li> </ul>
Project Labor Agreements with Community Workforce Provisions	The project owner and labor unions negotiate a project labor agreement with community workforce provisions that include targeted hire and WMBE goals and exemptions that minimize the impact of a PLA on a WMBE or small firm. A PLA can be signed for a single or multiple projects, or can be agency or citywide.	<ul style="list-style-type: none"> <li>• Can directly influence all hiring by labor union dispatch halls with less legal risk.</li> <li>• Offers increased control and coordination of different contractors and unions in large projects.</li> <li>• Encourages labor peace.</li> <li>• Offers a dispute resolution mechanism.</li> </ul>	<ul style="list-style-type: none"> <li>• Subject to the limitations of labor union national agreements.</li> <li>• May potentially increase barriers to small and WMBE firms to access public works projects.</li> <li>• May discourage participation of open-shop firms and workers.</li> <li>• May require investment into administration of new programs.</li> </ul>
Resolution	A municipal resolution is a formal version of a motion, adopted in written form that generally states a formal expression of an opinion, intent or policy.	<ul style="list-style-type: none"> <li>• Signals strong government support.</li> <li>• Opportunity for public comment and fact-finding.</li> <li>• Low risk because it lacks the force of law.</li> </ul>	<ul style="list-style-type: none"> <li>• No formalized enforcement structure.</li> <li>• Best for narrow issues with limited impact and short-term solutions.</li> </ul>
Responsible Contractor Standards	Government can issue a standard, policy or ordinance that includes criteria that contractors must follow. Standards can include targeted hire provisions.	<ul style="list-style-type: none"> <li>• Contractors are already familiar with these tools.</li> <li>• Gives contractors flexibility on how to achieve goals.</li> </ul>	<ul style="list-style-type: none"> <li>• Difficult to enforce past the bidding and awarding phase.</li> <li>• Monitoring dependent on compliance support and resources.</li> </ul>



## Best Practices of Targeted Hire

A targeted hire initiative, in itself, is not a guarantee that targeted hire goals will be met. Its success is largely dependent on design and implementation. Based on our analysis, we identified a set of best practices common among successful targeted hire initiatives across the U.S.:

- 1. Engage all stakeholders and facilitate collaboration:** A targeted hire initiative can bring unlikely allies into a new political relationship based on a shared agenda. Public agencies, unions, community-based organizations, training providers, and contractors must recognize the need for effective cooperation, communication and relationship building. A targeted hire initiative should adopt a broad strategy for stakeholder engagement and ensure that all parties commit to working together to achieve successful outcomes.
- 2. Create inclusive, equitable and realistic targeted hire goals that can be clearly communicated and measured:** A strong targeted hire initiative sets concrete goals that are strategic, politically feasible, legally defensible and measurable. Goals should impact the broadest possible range of disadvantaged and underrepresented community members; be responsive to the context and stakeholder needs; and be clearly defined in the policy's language.
- 3. Educate stakeholders and communicate goals:** Once a targeted hire program is designed, it is important to educate all stakeholders on the initiatives' goals and steps needed for its implementation, ensuring that all parties fully understand their roles and responsibilities.
- 4. Develop a strong system for contractor engagement and promote women- and minority-owned business (WMBE) participation:** A targeted hire initiative should consider the impact on contractors, particularly women- and minority-owned firms. It should anticipate needs and address barriers through programmatic support such as technical assistance and mentorship opportunities, and by promoting collaboration between large, small and WMBE contractors.
- 5. Create partnerships and secure funding to identify and recruit targeted workers:** A targeted hire initiative requires public agencies, contractors and other stakeholders to partner with community organizations, unions, and workforce development providers to reach and recruit new targeted workers. The initiative should allocate funding for targeted outreach and recruitment and for programs that adequately equip candidates with the necessary tools and skills.
- 6. Invest in pre-apprenticeship programs:** Pre-apprenticeship programs are key components of a targeted hire initiative, because they prepare new workers, particularly low-income individuals, women, and people of color, to enter the construction trades. A targeted hire program should dedicate funding for these pre-apprenticeships, promote collaboration with other industry partners, and facilitate the connection to registered apprenticeship programs through preferred or direct entry agreements.

7. **Support registered apprenticeship programs:** To ensure that training and employment opportunities are available to new workers, a targeted hire initiative should require contractors to engage with registered apprenticeships and include apprentice utilization goals. It should also support second- through fifth-year apprentices (and not just first-year placement) through program incentives and support services to ensure greater rates of apprentice completion and retention rates.
8. **Support job placement and worker retention:** It is important to improve the connection between training programs and employers by developing a well-defined referral system. This system would provide proper monitoring and oversight to place apprentices and journey-level workers into construction jobsites. The targeted hire initiative should include guidelines for monitoring workforce retention rates to ensure that workers are getting consistent employment and placements, while also improving jobsite conditions, through avenues such as cultural competency training, to increase worker retention.
9. **Create, staff and fund a robust and active compliance system:** A targeted hire initiative needs a robust compliance system with “teeth”; meaning that it has a system of clear workforce goals, strategies and expected outcomes that is connected to active monitoring, transparency, and consequences when there is a breach. It should include a multi-stakeholder advisory body, penalties and incentives, and dedicated funding, staffing and active compliance systems.

The potential impact of a targeted hire initiative is broad. It garners public support for projects; encourages working with new partners; has the potential to recruit more disadvantaged workers; creates workforce tracking and other compliance systems; and develops solutions to bidding and employment barriers. These initiatives can be extremely successful when designed and implemented effectively. Yet, concerns exist about the additional burdens that targeted hire initiatives may create. They can drive up construction costs and add complexity to the requirements that contractors must already comply with. This report is designed to provide specific data and information for assessing the advantages and challenges for each of the different targeted hire options and their feasibility in Seattle.

The report is separated into eight chapters. Chapter 1 provides a background on public works construction followed by Chapter 2 with an overview of targeted hire. Chapter 3 offers a detailed analysis of different targeted hire approaches, which are then compared in Chapter 4. Chapter 5 provides an analysis of the impact of targeted hire on women- and minority-owned businesses (WMBE) and Chapter 6 discusses the best practices for developing a targeted hire initiative. Chapter 7 discusses the existing legal framework within the City of Seattle as well as existing workforce development programs, and reviews lessons learned from the Port of Seattle and Sound Transit PLAs. Lastly, Chapter 8 explores the best practices and opportunities for the City of Seattle.



# 1. INTRODUCTION TO PUBLIC WORKS CONSTRUCTION

Overview of the Construction Industry

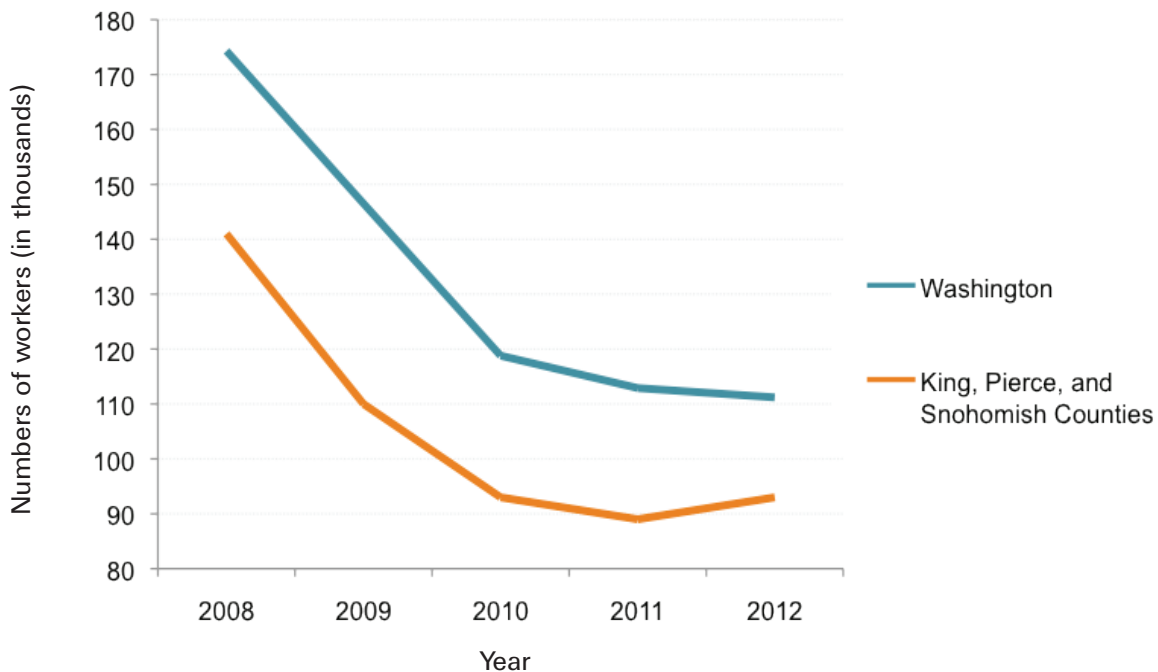
City of Seattle Public Works

## Overview of the Construction Industry

The construction industry constitutes one of the largest sectors of the U.S. economy. In 2013, the total estimated value of construction work in the U.S. amounted to \$942 billion with close to \$275 billion in public construction projects.<sup>1</sup> The industry is comprised of more than 729,000 businesses<sup>2</sup> employing 6.5 million workers, in addition to 2.5 million self-employed workers.<sup>3</sup> Several distinct but related sectors make up the construction industry; these are the residential, commercial, industrial and public sectors. The industry also includes utility construction, transportation, and other infrastructure projects. Construction is a core economic industry in every municipality that allows for the development of infrastructure, such as railroads and bridges, and the shaping of the built environment with homes, factories, offices, and parks.

Over the last decade, the burst of the financial and housing bubble and the resulting recession took a significant toll on construction projects and jobs. Nationally, total employment in the construction industry fell by 1.8 million between 2008 and 2012.<sup>4</sup> The recession deeply impacted the construction industry in Washington State and Seattle. It experienced more job loss than any other part of the state's economy. Between 2008 and 2012, construction jobs decreased by 36 percent in Washington State and by the end of 2010, the sector had lost over 63,000 jobs.<sup>5</sup> In King, Pierce, and Snohomish counties, construction employment decreased by 34 percent during the same time period, with a net loss of 47,800 jobs, as shown in **Figure 2** below.<sup>6</sup>

**Figure 2: Number of Employed Construction Workers in Washington State and King, Pierce, and Snohomish Counties 2008-2012**



Sources: Washington State, Employment Security Department, Washington Employment Estimates and King County Data Tables; Community Attributes Report.

As the construction industry slowly rebounds, some of those jobs will return. In the tri-county region, construction jobs are estimated to have increased from 93,200 in 2012 to 95,400 in 2013, and long-term projections indicate construction employment may reach 110,500 workers by 2019.<sup>7</sup> These forecasts are not projected to come close to the 141,000-worker peak of 2008.<sup>8</sup>

## City of Seattle Public Works

The construction sector is an important source of employment and can provide a pathway to middle class careers for workers. The City of Seattle has devoted resources toward developing strategies that advance social and economic equity within city-funded construction projects to increase the meaningful employment of women, people of color, and socially and economically disadvantaged workers.

The Department of Finance and Administrative Services (FAS), through the City Purchasing and Contracting Services, issue all City public works contracts. Between 2010 and 2013, City of Seattle public works payments averaged approximately \$200 million per year, adjusted to 2013 dollars. Each worker was associated with \$530,000 in contract value.<sup>9</sup> City public works projects generate approximately 1.2 to 2.0 jobs per \$1 million spent, depending on the project type (based upon the actual work hours reported by dollars spent). In 2012, public work expenditures created the equivalent work hours of 1.2 construction jobs per million dollars in construction project spent, comparable to 322 full time construction jobs during that year.<sup>10</sup> Assuming the City of Seattle maintains its \$200 million average on public works expenditure between 2014 and 2019, this spending would create 400 full time construction jobs annually, based on 1800 labor hours per year.<sup>11</sup>

Because workers do not work full-time and year-round on projects, the number of workers employed is higher. A recent UCLA study, based on a sample of City of Seattle public works projects over a three-year period that accounted for 26 percent of all project hours, found that City of Seattle projects provided employment to 2,635 unique workers.<sup>12</sup>

In terms of hiring diversity, people of color<sup>i</sup> performed approximately 25 percent of all hours worked on City of Seattle public works projects between 2009 and 2013.<sup>13</sup> This is lower than the number of people of color hired on all construction projects nationally at 32 percent.<sup>14</sup>

**Figure 3** presents City of Seattle hiring outcomes in comparison with other select public works departments across the country. These data illustrate that the City of Seattle has many positive hiring practices that extend to its diverse communities. However, findings from a UCLA study indicate that a majority of workers hired reside outside of Seattle and King County.<sup>15</sup> Fourteen percent of the sample workers are economically disadvantaged and live in King County.<sup>ii</sup> These findings suggest that the City of Seattle could increase employment and training opportunities to

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i People of color comprise Latino, African-American, Native American, Asian and Pacific Islander workers.

ii Defined as individuals residing in zip codes with a high density of residents living at 200% of the Federal Poverty Level or below, are unemployed, and/or do not have a college degree.

target more workers within the county and from disadvantaged areas. In addition, all the projects show low rates of employment of women. These rates are lower than the national average of 9 percent for female participation in all construction.<sup>16</sup>

**Figure 3: Women, Minorities and Apprentices in Public Works Construction in Selected Geographies**

	<b>Seattle, WA*</b>	<b>Milwaukee, WI**17</b>	<b>Cleveland, OH***18</b>	<b>Boston, MA****19</b>
Women	4.5%	1.5%	4%	6%
People of Color	25%	25%	24%	36%
Apprentices	13%	Not available	7%	Not available

*\*Data for 2009 - 2013*

*\*\* Data for 2012*

*\*\*\*Data for active projects as of February 2014*

*\*\*\*\*Data for November 2013 to February 2014*

The City of Seattle, through the centralized function operated by the Department of Finance and Administrative Services, under City Purchasing and Contracting Services, recently introduced several noteworthy best practices in its public works contracting services. These include greater enforcement mechanisms, compliance monitoring, a new on-line payroll reporting system, and a pilot project labor agreement with community workforce provisions for the Elliott Bay Seawall Project. The Seawall CWA, in particular, has integrated a number of progressive features and best practices, including clear goals, advanced stakeholder involvement, improved clarity of roles and responsibilities, and strong goals for women and people of color as well as local workers from socially and economically disadvantaged zip codes (see Chapter 8). This experience, coupled with ongoing collaborations with stakeholders, position the City of Seattle with the knowledge and capacity to successfully implement any targeted hire program it chooses.

In addition, Resolution 31485, supported by Seattle Mayor McGinn and adopted by City Council in September 2013, led to the creation of an ad hoc Construction Careers Advisory Committee (CCAC). The committee is comprised of general contractors, women- and minority-owned contractors, labor leaders, workforce training providers, community leaders and a policy expert. The CCAC will develop recommendations to the Mayor and City Council for creating and implementing strategies and mechanisms that can improve construction career opportunities for targeted individuals, including Seattle residents.



## 2. INTRODUCTION TO TARGETED HIRE

What is Targeted Hire?

Who is Included in Targeted Hire?

Targeted Hire versus Local Hire

Who is Involved in Creating a Targeted Hire Initiative?

What are the Benefits of Targeted Hire?

What are the Challenges of Targeted Hire?

What are the Different Targeted Hire Approaches?

## What is Targeted Hire?

“Targeted hire” is a policy initiative aimed at increasing employment opportunities for disadvantaged workers, who often experience difficulty accessing the construction workforce pipeline. The value of targeted hire is that it creates institutional mechanisms to increase the availability and accessibility of opportunities for these workers. For example, it can recommend that a percentage of the total hours in a project are performed by apprentices, women, or disadvantaged workers. A targeted hire program benefits from the robust training programs that exist in the construction industry, that are tied to available work. Because workers can learn construction skills on the job, it is one of the few industries where a person who has little formal education or who has previously faced employment barriers can enter the field and be trained while earning a living wage and good benefits. A targeted hire initiative can develop a fresh, previously untapped workforce and create new pipelines for workers to get into construction careers.

Many of the targeted hire tools lay out strategies for advancing hiring goals, establish a mechanism for implementing the program, and define a process for monitoring and enforcement. Certain targeted hire tools are designed to support workers at all levels of the workforce pipeline by including recruitment, support services (i.e. GED classes, childcare support, and funding for tools), training programs, and job placement. These components aim to address structural barriers workers face in accessing work. To provide this type of assistance, some targeted hire initiatives include strategies for funding programs and support services.

## Who is Included in Targeted Hire?

Targeted hire focuses on disadvantaged individuals, who are underserved or have faced historical or other barriers to employment. This can include:

- Long-term unemployed workers, formerly incarcerated individuals, single parents, workers on public assistance, workers with a history of homelessness, and at-risk youth.
- Individuals residing in areas that have high poverty rates, high unemployment rates, or other markers of economic distress.<sup>i</sup>
- Underrepresented groups of people such as women, people of color, and veterans. In Seattle, even with I-200, targeted hire can include aspirational goals for women and people of color, who are also more likely to be included under other economic criteria as well (see discussion on I-200 in Chapter 7).
- Pre-apprentices, graduates of apprenticeship programs, or graduates of other targeted training and hiring programs.

Each targeted hire program is unique, reflecting the specific needs of the different stakeholders involved. Target criteria vary and depend on a range of factors such as project type, local laws and

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<sup>i</sup> Legal decisions are supportive of such economic markers, even if other criteria (specifically geographic limits) are legally more difficult to impose.



policies, community needs, and past discrimination or exclusion of a group of workers. Public agencies should take all these factors into consideration in order to formulate appropriate targeted hire goals that will create a balanced approach to the opportunities generated by their expenditures. **Figure 4** below showcases two examples of targeted hire criteria, illustrating the different factors used to determine what targeted populations benefit from these programs.

**Figure 4: Examples of Targeted Hire Criteria**

<b>Los Angeles County Metropolitan Transit Authority Project Labor Agreement</b>	<b>San Francisco Local Hire Ordinance</b>
<ol style="list-style-type: none"> <li>1. Individuals residing within:               <ol style="list-style-type: none"> <li>a. Economical Disadvantaged Areas (zip codes with annual median income less than \$40,00 per year), or</li> <li>b. Extremely Economically Disadvantaged Area (zip codes with annual median income less than \$32,000 per year)</li> </ol> </li> <li>2. Disadvantaged workers who reside in these areas and face at least two barriers to employment:               <ol style="list-style-type: none"> <li>a. Being homeless</li> <li>b. Being a custodial single parent</li> <li>c. Receiving public assistance</li> <li>d. Lacking GED or High School Diploma</li> <li>e. Having a criminal record</li> <li>f. Suffering from chronic unemployment</li> <li>g. Emancipated from foster care</li> <li>h. Being a veteran of the Iraq, Afghan war, or</li> <li>i. Being an apprentice with less than 15% of the hours required to graduate to journey level</li> </ol> </li> </ol>	<ol style="list-style-type: none"> <li>1. Disadvantaged workers who reside in San Francisco, and:               <ol style="list-style-type: none"> <li>a. Reside in a census tract within the City with a rate of unemployment in excess of 150%, or</li> <li>b. Have a household income of less than 80% of the annual median income, or</li> </ol> </li> <li>2. Face at least one of the following:               <ol style="list-style-type: none"> <li>a. Being homeless</li> <li>b. Being a custodial single parent</li> <li>c. Receiving public assistance</li> <li>d. Lacking GED or high school diploma</li> <li>e. Participating in a vocational English as a second language program, or</li> <li>f. Having a criminal record or any other involvement with the criminal justice system</li> </ol> </li> </ol>

*Source: Los Angeles County Metropolitan Authority Project Labor Agreement, and San Francisco Local Hire Ordinance.*

## Targeted Hire versus Local Hire

There is significant overlap between “targeted hire” and “local hire” as the two are sometimes used interchangeably, but a distinction must be made between these terms. Local hire primarily refers to programs that require direct hiring of residents of specific local areas. Targeted hire refers to hiring requirements for target groups, such as minorities, women, or low-income workers. In other words, local hire is tied solely to a specific geographic region, while targeted hire is broader, encompassing different segments of the population across geographic regions. For instance, while a targeted hire initiative might require hiring workers from an economically disadvantaged zip code, a local hire program might require hiring workers who live within five miles of the construction project.

Also important to consider is that local hire is sometimes local to the city or local to the county, which means that even established workers who are already in the industry count. Targeted hire, on the other hand, targets workers who are traditionally underserved and underrepresented in the

industry, including both those who are new and those who are struggling to stay on a career track in construction. As industry researcher Kathleen Mulligan-Hansel indicated, “We’re more interested in thinking about how to target workers who need a boost, who are new to the industry, or who are unlikely to get into a construction apprenticeship or journeyman job without the targeting.”<sup>20</sup>

Projects can define local as a certain number of zip codes near a project site, within city limits, within a school district or in another type of geographic boundary that the regulatory language pre-determines. Local hire may not always be an option depending on specific state or local laws, or when attached to certain funding sources. For example, projects that receive federal funding cannot include local hire provisions, since federal dollars must serve the country without geographic bias. Many public agencies have adopted initiatives containing elements of both, (i.e. local targeted hire), such as the cities of San Francisco or Cleveland, which require hiring local residents while also hiring a percent of workers who face employment barriers or are low-income.

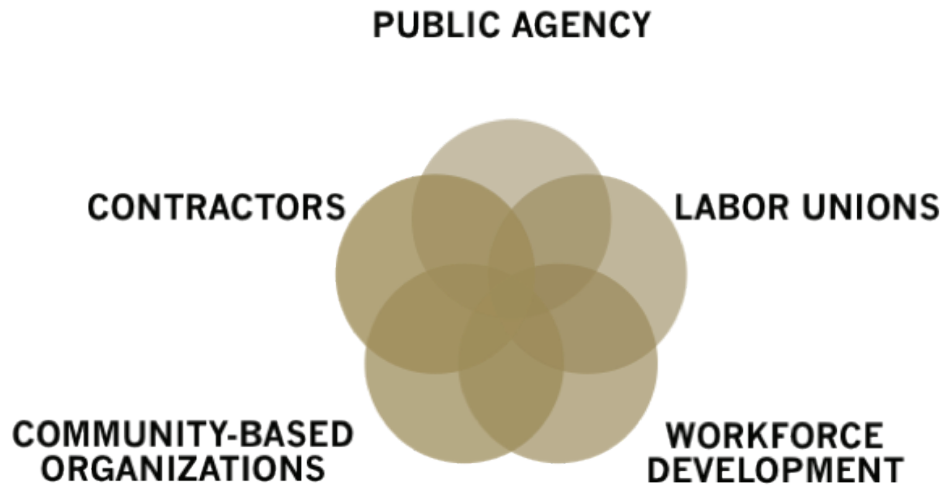
For the purposes of this report, we review several local hiring ordinances that have provisions for the inclusion of targeted disadvantaged workers. Our intention is to evaluate the tool and its effectiveness in getting targeted populations, whether local or disadvantaged, on to public agency job sites.

### **Who is Involved in Creating a Targeted Hire Initiative?**

Developing a targeted hire initiative requires bringing different stakeholders with diverse needs to the table. Stakeholders represent public agencies, labor unions, contractors, including women-and minority-owned contractors, community organizations, and workforce development agencies such as apprenticeship or pre-apprenticeship training programs.

The diversity of stakeholders and relationships can prove very fruitful in establishing targeted hire, as it creates a unique space to engage in dialogue, establish trust, and create meaningful and committed partnerships. At the beginning, it is important to establish a common understanding of each stakeholder’s needs and expectations, the value they bring to the program, and what they need from each other. **Figure 5** below illustrates the different stakeholders involved in developing a targeted hire initiative.

**Figure 5: Key Stakeholders in Targeted Hire**



*Source: Green for All. "High Road Agreements: A Practice Brief by Green for All."*

## What are the Benefits of Targeted Hire?

The impact of a targeted hire initiative can be extensive. It encourages:

- **Employment opportunities for socially and economically disadvantaged individuals:** Targeted hire provisions improve economic opportunities for underserved communities and increase employment access for underrepresented workers. Since these jobs provide family-sustaining wages and benefits, as well as workforce development training, targeted hire initiatives can greatly increase workers' earning potential, both short and long term.
- **Economic development:** A targeted hire initiative helps ensure public work investments promote local and regional economic growth. More jobs in an area lead to increased purchasing power and tax contributions. Individuals are able to invest more in their communities and gain a sense of shared ownership over the infrastructure. Municipalities also have greater resources to provide services throughout the community. In Los Angeles County, data from the Los Angeles Unified School District certified payroll system reported that work generated by their targeted hire program resulted in approximately \$1.02 billion in wages for Los Angeles County residents between 2004 and 2011.<sup>21</sup>
- **Educational opportunities:** A targeted hire initiative creates opportunities for a diverse pool of new workers by establishing goals to hire and place apprentices on projects while fostering a collaborative pipeline between pre-apprenticeships, apprenticeships, and efficient job referral systems. Targeted hire also ensures that new workers get the training and experience needed to achieve journey-level status. Workers who complete an apprenticeship make an average of \$240,037 more over their lifetimes than those who do not participate in apprenticeships.<sup>22</sup>

- **A skilled workforce:** Targeted hire initiatives connect contractors with a pool of workers that are prepared for construction jobs and can deliver high quality work. Good training and employee benefits reduce worker turnover, and in turn, increase employer stability and competitiveness. For instance, in San Francisco, contractors can use the construction employment referral services of CityBuild. CityBuild matches the contractors' request for skills and qualifications with eligible skilled San Francisco workers.<sup>23</sup>
- **Participation of small and women- and minority-owned businesses (WMBEs):** Targeted hire can create prospects for small and women- and minority-owned businesses (WMBEs) by setting goals for their participation and creating infrastructure to build their capacity. The Los Angeles Unified School District project labor agreement, for example, has initiated various small business development and contract procurement strategies, such as trainings and technical assistance, to ensure that barriers to entry for small businesses are minimized (see Chapter 5).<sup>24</sup>
- **Collaboration and stakeholder engagement:** The success of a targeted hire initiative depends on the ability of stakeholders to effectively work with each other in achieving program goals. This affords the opportunity to cultivate networks and collaborative initiatives while addressing a wide array of interests and needs. A targeted hire initiative can build and strengthen this institutional infrastructure and create the foundation for future collaborations. Even if the interests of stakeholders diverge, if enough collaboration and commitment to program success is cemented earlier on, parties can make an effort to overcome differences and agree to the terms set forth by the initiative.

## What are the Challenges of Targeted Hire?

There are potential barriers and challenges when implementing a targeted hire initiative:

- **Legal constraints:** Targeted hire programs continually face legal challenges regarding the constitutionality of requiring contractors to hire specific workers, particularly for local hire requirements and when determining whether union collective bargaining agreement can be superseded. Thus far, most approaches have withstood legal scrutiny (see legal section in Chapters 3 and 7).
- **Cost increases:** There are concerns that targeted hire initiatives increase project costs. Contractors may need to submit higher bids in response to the risk of target goals and/or account for compliance resources. Public agencies may also accrue additional costs related to the oversight and monitoring of the targeted hire initiatives.
- **Diversity of workforce:** Compared to other cities, Seattle construction projects currently have similar workforce diversity in terms of people of color and women. Any targeted hire approach should build on these goals and not create barriers that could reverse the existing diversity.

- **Complexity:** Targeted hire adds to the complexity of requirements that a contractor must comply with. This can pose barriers for contractors, particularly small prime contractors and small subcontractors.
- **Barriers to WMBE utilization:** Imposing additional requirements on contractors through targeted hire initiatives could discourage WMBE participation. WMBE firms are more likely to hire minority workers, and anecdotal discussion confirms that WMBE firms are committed to a close-knit group of skilled workers who are unlikely to be part of a union hiring hall dispatch system.<sup>25</sup> Also, since many WMBEs are open-shop, targeted hire initiatives requiring union procedures pose an additional obstacle as WMBE firms must adapt to working within a union environment for the duration of the project (see Chapter 5).

## What are the Different Targeted Hire Approaches?

Public agencies have many policy options to implement targeted hire. We will explore these tools in greater depth in Chapter 3. The following are common targeted hire mechanisms:

1. **Community Benefits Agreement:** A community benefits agreement is a legally binding contract between a broad community coalition and a developer (and in some cases other signatories such as public agencies and unions), that establish community benefits, such as targeted hire goals.
2. **Contract Provisions:** Public agencies or project owners can adopt individual contract specifications or provisions within the contract language that include targeted hire criteria.
3. **Executive Order:** An executive order is a directive or suggestion issued by the leader of the executive branch (such as a mayor, governor or president) to staff and officials in the executive branch of government. A targeted hire executive order can direct public agencies, municipalities and departments within the executive's control to employ targeted workers, increase the participation of WMBE firms, or fund construction training programs.
4. **Free-Market:** A free market targeted hire approach refers to allowing existing labor supply and demand trends to dictate the outcomes for employment in the construction industry.
5. **Ordinance:** A municipality can pass an ordinance that creates standards that can apply to a municipality or public agency, such as all public works contracts or a community college district. These standards can include targeted hire goals.
6. **Project Labor Agreement (PLA) with Community Workforce Provisions:** A project owner or managing entity and a consortium of labor unions negotiate an agreement that establishes safe working conditions and rules, project execution and accountability on the job, and protocols for resolving labor disputes. Community workforce provisions can be part of a PLA and include targeted hire goals.

7. **Resolutions:** A resolution expresses the policy, official position, or intent of a legislative or public body. They provide guidance and are not legislative acts intended to become law. A municipality can adopt a resolution to express its intent and purpose in promoting targeted hire practice.

8. **Responsible Contractor Standards:** A responsible contractor policy is a set of enforceable specifications adopted by a governing entity and incorporated into a construction bid as a condition for performing work on public work contracts.

Targeted hire approaches can also be implemented through a combination of policy tools. For example, an ordinance can establish responsible contractor requirements that include targeted hire goals on projects and other provisions such as worksite safety, worker benefits, and compliance. Another example is a resolution calling for a project labor agreement with community workforce provisions. More hybrid approaches are discussed in Chapter 3.

# What Is Targeted Hire?

Targeted hire is a program or policy aimed at increasing meaningful employment and training opportunities for disadvantaged and underrepresented workers.

## How does targeted hire work?

Public agencies have different options to change or strengthen their hiring practices, such as: Project Labor Agreements, Ordinances, Executive Orders, Contract Provisions, etc.

A **PLA** is a contract between a project owner or prime contractor and labor unions that establishes:

- Working conditions
- Dispute resolution
- Community workforce hiring provisions

PLAs can apply to all projects within a public agency or can be negotiated on a project-by-project basis.

An **Ordinance** is legislation that mandates certain standards for public construction projects that are under the authority of the municipality.

These can include:

- targeted hiring goals
- use of construction employment referral programs
- support of apprenticeships and training programs.

## Who does targeted hire affect?

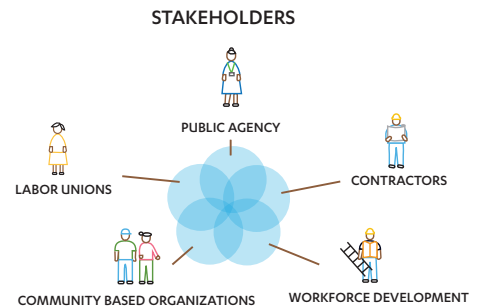
**Targeted hire criteria can include** women, minorities, veterans, economically disadvantaged individuals, & individuals facing barriers to work: homeless, single parents, those without High School or GED, formerly incarcerated, etc.

## What are the benefits?

- **Economic Development:** Bringing growth to local and regional economies through hiring provisions and support of small business enterprises. More jobs in an area leads to more money back to the community and local businesses.
- **Employment Opportunities:** Increasing job access for low-income workers, women, veterans, people of color, and other disadvantaged workers.
- **Educational Opportunities:** Using a training focused model that connects workers with job training.
- **Skilled Workforce:** Providing contractors with access to a trained, qualified workforce.
- **Small Business Participation:** Increasing the capacity of small minority- and women-owned businesses to compete and participate in public works contracts.

## Who develops a targeted hire program?

Developing a comprehensive targeted hire program entails bringing together different stakeholders with diverse needs, expectations, and levels of expertise. To ensure that all perspectives are represented, stakeholders need to recognize their mutual benefits and interests so they can create the engagement and commitment necessary to achieve successful outcomes.





## 3. TARGETED HIRE APPROACHES

Project Labor Agreements with Community Workforce Provisions

Targeted Hire Ordinances

Additional Targeted Hire Approaches

Hybrid Targeted Hire Approaches



This chapter begins with an in-depth review of project labor agreements and targeted hire ordinances. We focus on these two approaches because they are the most commonly used and studied. We provide background on each of the tools, their benefits and challenges, and review the goals and outcomes of the cases reviewed. We then provide an overview of other targeted hire tools to the level of detail available and the advantages and challenges of each approach.

## PROJECT LABOR AGREEMENTS WITH COMMUNITY WORKFORCE PROVISIONS

### What is a Project Labor Agreement?

A Project Labor Agreement (PLA) is a comprehensive contract between a consortium of labor unions and the owner or managing entity of a construction project.<sup>26</sup> It operates as a “job-site constitution,” establishing safe working conditions and rules, project execution and accountability on the job, and protocols for resolving labor disputes without resorting to strikes and lockouts.<sup>27</sup> Contractors and subcontractors on the project must abide by the policies contained within it. Because they are specifically tailored to the needs of particular projects, PLAs give project owners, building contractors, and trade unions standardized expectations while creating a unique opportunity to anticipate and avoid potential problems that might otherwise arise and possibly impede project progress.

PLAs can vary in scope; they can cover an individual project, multiple related projects or an entire construction program. Project-specific PLAs are uniform agreements covering all the crafts on a project, and lasting only as long as the project. Agency-wide PLAs apply to multiple projects undertaken by a public agency. A citywide or master PLA can require that PLAs are negotiated and set in place for all public works projects within a municipality or based on a particular threshold project size (see Figure 12 for threshold examples). PLAs can be classified according to the parties signatory to the agreement:

- **Owner-Negotiated Project Labor Agreements:** Project owners negotiate the terms of the PLA and are signatory parties to the agreement. In Seattle, Sound Transit and the Port of Seattle are two of such examples;

or

- **Owner-Directed Project Labor Agreements:** Project owners may direct that a winning contractor must negotiate a PLA with labor unions, where the owner is not a party to the agreement itself.

In 2002, the King County Council directed the winning contractor to negotiate a PLA for the Harborview Medical Center, though an oversight committee commissioned by the County determined the scope, form, nature, and content of the PLA.<sup>28</sup> Similarly, in 2009, the Washington State Department of Transportation (WSDOT) directed labor unions and the winning contractors to negotiate and sign a PLA for the SR 520 Pontoon construction project.<sup>29</sup> It is important to note that

contractor negotiated PLAs in the public sector are rare,<sup>i</sup> as the public owner typically negotiates the agreements with the labor unions directly.<sup>30</sup>

Another distinctive aspect of PLAs is whether or not they include community workforce provisions that deal specifically with targeted hire. A PLA with community workforce provisions has been referred to as a Community Workforce Agreement (CWA), though the City of Seattle is working towards using a more common nomenclature such as a PLA with community workforce provisions. The building trades initiated CWAs in the 1990s to increase access to jobs for community residents,<sup>31</sup> and in response to community concern that they were being excluded from construction jobs.<sup>32</sup> Now, CWA provisions have become a powerful advocacy tool for community and labor to expand construction employment opportunities to those who may have faced barriers accessing jobs.<sup>33</sup>

Though a great number of PLAs increasingly include community workforce provisions, it is important to note that not all PLAs have them. Community workforce provisions can vary in scope and extent, depending on the local characteristics and the needs of the project. A recent study by Cornell University’s School of Industrial Relations analyzed 185 PLAs and found that over 100 of the agreements included different community workforce provisions.<sup>34</sup> The most common workforce provisions included in these PLAs are shown in **Figure 6** below.

**Figure 6: Community Workforce Provisions in Project Labor Agreements\***



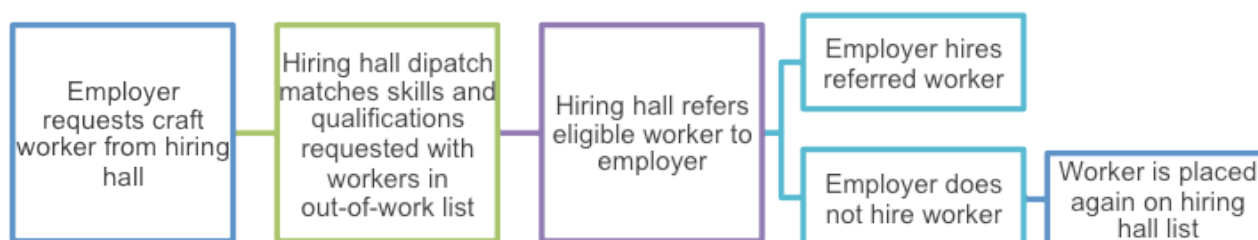
*\*Based on an analysis of 185 PLAs from across the U.S. adopted and implemented from 1995 to 2010.*

*Source: Cornell University, School of Industrial Relations, “Community Workforce Provisions in Project Labor Agreements.”*

<sup>i</sup> In the private sector, it is more common for the owner to ask the contractor to negotiate the project labor agreement.

PLAs require that contractors hire through union hiring halls, which are union-operated placement centers. Contractors call union halls to request a specific number of workers, with specific skillsets, for a specific amount of time. This way, contractors know there will be workers available with a consistent level of skills for the work they need to complete, and they only keep these workers on their payrolls until the work is done. Union hiring halls deploy workers by matching the contractors' requests to their own list of available workers, selecting workers based on an out-of-work list<sup>ii</sup> and the skill types and levels requested.<sup>35</sup> Union hiring halls can also refer apprentices from joint labor-management apprenticeship programs.<sup>36</sup> **Figure 7** illustrates the hiring hall process.

**Figure 7: The Union Hiring Hall Process**



PLAs with community workforce provisions direct hiring halls to dispatch targeted workers to the jobs. Since PLAs supersede the unions' collective bargaining agreements, hiring halls may refer journey-level workers and apprentices based on selected conditions, such as the zip code in which the individual resides or whether they are first-year apprentices.

In cases where unions are unable to meet the request for targeted workers and where qualified workers are unavailable, PLAs usually have a provision that gives contractors the option of using alternative hiring sources. As Kathleen Mulligan-Hansel indicates, "Some CWAs allow people to be hired directly from the community if the hiring halls cannot provide qualified targeted workers according to requirements. This is an important provision that ensures that "we don't have any workers' isn't used as an excuse to circumvent the targeted hire provisions."<sup>37</sup>

Though PLAs often require the exclusive use of hiring halls, there are some limited exemptions for open-shop contractors to use their workforce, referred to as "core" workers. For instance, the Los Angeles Unified School District PLA allows contractors to hire up to five core workers, while the Seawall CWA allows up to two. Criteria used to identify who is a core worker depend on the PLA, but generally include:<sup>38</sup>

- Working a certain total number of hours (1,000 to 3,000 hours) for the employer in the designated construction craft classification;
- Appearing in the contractor's active payroll for a certain number of hours or days over a given number of months prior to the project;

ii Workers are placed on an out-of-work list prioritized according to how long workers have been job hunting.

- Meeting the minimum journey-level qualifications for the craft they are performing,<sup>39</sup> and
- Possessing any federal or state license required to perform project work.

Similarly, non-union workers can participate in PLA-covered work if they pay and maintain as current their union representation fees during their time on the project. To do so, they must register with the hiring hall and verify that they meet the core worker requirements. The hiring hall places them on the out-of-work list to be referred to work.

PLAs with community workforce provisions also include criteria and resources for training and placing new workers into the industry. They can include a “preferred entry agreement,” which allows targeted workers in pre-training programs to enter into apprenticeship programs (see Chapter 6). Because many workforce provisions also require the hiring of apprentices, new workers are likely to begin working and earning right away. The Seawall Community Workforce Agreement provides preferred entry for graduates of approved pre-apprenticeship program, setting a goal of one direct entry placement for every five apprentices on the project.<sup>40</sup>

PLAs can also include funding for pre-apprenticeship programs. This ensures resources for training as well as placement (see Chapter 6). PLAs with community workforce provisions also require significant funding for monitoring, enforcement, and evaluation of outcomes to ensure that stakeholders are compliant and targeted goals are being met.

## **Key Advantages of Project Labor Agreements with Community Workforce Provisions**

PLAs allow public agencies to leverage large scale construction projects for high quality jobs, “establishing standards for wages, benefits, safety and skills training that ensure community members hired under its terms get access to a real [construction] career.”<sup>41</sup>

Secondly, PLAs are one of the few tools available to legally circumvent regular union dispatch hiring hall processes, because they supersede existing unions’ master agreements. As such, within a PLA, hiring halls can prioritize targeted disadvantaged individuals over the order of the out-of-work list.<sup>42</sup> By superseding local collective bargaining agreements, a PLA can also reconcile conflicting provisions of the local labor agreements between different contractors and unions.

In addition, PLAs encourage labor peace, since parties agree to no lockouts, no strikes, and no work stoppages. PLAs also have a clear grievance procedure to solve disputes among stakeholders. In regards to cost, an extensive body of research has documented the benefits of PLAs, stating that they create efficiencies and coordination to ensure projects are completed on time and on budget.<sup>43</sup> Moreover, PLA proponents claim that increased training and skill levels usually translate into safer job performance and lower maintenance and injury-related costs.<sup>44</sup> We also note that there are dueling studies that report the contrary,<sup>45</sup> with different stakeholders presenting diverging opinions on the matter.

## Main Challenges of Project Labor Agreements with Community Workforce Provisions

Labor unions and the project owner or contractors are the only parties signatory to PLAs. Other stakeholders can influence the process so that their needs are incorporated into targeted hire goals, but this is not an institutional role. Influencing the negotiations can be a challenge for those stakeholders who do not have enough financial or political resources.

Another concern is that PLAs limit the number of core workers because contractors are required to hire the majority of workers from the hiring hall. PLAs may potentially discourage open-shop contractors, including open-shop WMBEs, from bidding in public works projects. In Seattle, WMBE firms have expressed concern over the effects of PLAs on WMBE utilization, noting that PLAs and the union dispatch system do not fit their business model, and pose additional challenges for their participation (see Chapter 5).<sup>46</sup> Many of the Associated General Contractors of Washington's non-union members, including WMBE firms, do not bid on PLA projects as union work rules included within the PLA make it difficult for them to be competitive.<sup>47</sup>

Though we did not find studies or reports from public agencies utilizing PLAs to assess whether or not PLAs decrease open-shop businesses' participation, a recent Port of Oakland progress report states that "Unions continue to work successfully with non-Union Contractors working under the PLA to ensure that those Contractors are able to use both their 'core' employees and skilled Union members from the hiring halls on their work crews."<sup>48</sup> Similarly, under the Los Angeles Unified School District PLA, small contractors, open-shop and union, received close to \$4.2 billion in contract dollar awards, or 48 percent of total contract dollars awarded between 2003 and 2011.<sup>49</sup> Small Business Program representatives have stated that, "there were many non-signatory contractors that participated in the bidding process [...] Some of these contractors became signatory (union) contractors after being exposed to the union hiring halls and apprenticeship programs. Others did not become signatory, but still were satisfied to bid repeatedly on later LAUSD projects."<sup>50</sup>

There is also concern that a PLA requirement may potentially reduce the pool of available bidders, leading to a lack of competition and increased project costs.<sup>51</sup> However, an analysis of bids before and after PLAs were negotiated for infrastructure projects in the City of Los Angeles, found that bids submitted under a PLA were closer to the engineers' estimates, while those without a PLA tended to run higher.<sup>52</sup>

## Project Labor Agreements in Seattle

Regionally, the King County area has extensive and lengthy experience with PLAs. Project labor agreements governed approximately \$1.5 billion in public works projects, including the blanket PLAs from Sound Transit and the Port of Seattle, and project specific PLAs such as:

- Harborview Medical Center Seismic Stabilization and Critical Care Expansion, completed in 2008;

- The Seattle Central Library, completed in 2004;
- The Seattle Seahawks Football Stadium, completed in 2002;
- The Seattle Public Utilities Tolt Treatment Facilities, completed in 1999;
- Safeco Field, completed in 1999;
- Port of Seattle Pier 66, completed in 1999; and
- City of Seattle Civic Center (City Hall, Municipal Court and Justice Center), completed in in 2003.

Although the Seawall PLA is the first PLA led by the City in over 10 years, the City has had experience with at least three PLAs in the past.

## Project Labor Agreements Reviewed

Findings in this report are based on the following seven project labor agreements (see descriptions in Appendix C: Targeted Hire Programs Reviewed):

### **Project-Specific**

- The Port of Oakland Maritime and Aviation PLA (MAPLA), signed in 2000.

### **Multiple Projects**

- The Los Angeles Unified School District (LAUSD) PLA, signed in 2003.

### **Public Agency-Wide**

- The Hayward Unified School District PLA, signed in 2009.
- The Los Angeles County Metropolitan Transportation Authority (LACMTA) PLA, approved in 2012.
- The City of Los Angeles Department of Public Works PLA, signed in 2010.

### **Seattle PLAs:**

- The Port of Seattle master PLA, signed in 1999.
- Sound Transit PLA for the construction of Sounder Commuter and Link Light Rail Projects, signed in 1999.

As shown in **Figure 8**, all of the PLAs reviewed (excluding Seattle) have had positive targeted hire outcomes, and where applicable, increased apprentice utilization rates. In our review of the literature surrounding these PLAS, we were unable to locate data on targeted workers and apprentice participation rates before these programs were implemented. We believe the tracking of workers pre-PLA was often not in place. Many of these targeted hire approaches have tried to address this concern by establishing clear reporting mechanisms (see Chapter 6).

**Figure 8: Project Labor Agreements - Targeted Hire Goals and Outcomes**

	<b>Workforce Profile Pre-PLA</b>	<b>Workforce Goals</b>	<b>Workforce Outcomes</b>	<b>Apprentice Participation Pre-PLA</b>	<b>Apprentice Goals</b>	<b>Apprentice Outcomes</b>
Los Angeles DPW	Not Available	30% local residents in designated zip codes, 10% disadvantaged workers	From 2010-2012, 33% local residents, 22% disadvantaged workers <sup>53</sup>	Not available	20% apprentices	From 2010-2012, 23% apprentices
LAUSD	Not Available	50% local residents in LAUSD zip codes	From 2004-2011, 41% LAUSD district residents, 68% local residents (within LA County) <sup>54</sup>	Not available	30% apprentices in each craft; of this 40% first-year apprentices	From 2004-2011, 32% of workers were apprentices, 42% of apprentices were first-year apprentices
Hayward USD	Not Available	30% local residents	From 2010-2011 42% local residents <sup>55</sup>	Not available	1 Hayward resident apprentice per \$5 M; No more than 2 entry-level apprentices for each craft	Not available
LACMTA	Not Available	40% residents in zip codes where median income is \$40,000 or less, 10% disadvantaged workers	As of 2014, <sup>56</sup> 54% workers residing in economically disadvantaged areas, 14% disadvantaged workers <sup>57</sup>	Not available	20% apprentices	Not available. <sup>iii</sup>
Port of Oakland	Not Available	50% local residents <sup>iv</sup>	From 2012-2013, 54% local residents <sup>58</sup>	Not available	20% apprentices	From 2012-2013, 14% apprentices
Port of Seattle	Not Available	None	None	Not available	15% craft hours performed by apprentices, 15% apprentices of color, 10% women apprentices	For 2013, 12% hours performed by apprentices, 17.6% apprentices of color, 4.5% women <sup>59</sup>

iii The Westside Subway Extension Exploratory Shaft Project was exempted from apprenticeship requirements.

iv Local refers to Local Impact Area, defined as Alameda, Emeryville, Oakland, and San Leandro) and Local Business Area, defined as Alameda and Contra Costa counties.

	<b>Workforce Profile Pre-PLA</b>	<b>Workforce Goals</b>	<b>Workforce Outcomes</b>	<b>Apprentice Participation Pre-PLA</b>	<b>Apprentice Goals</b>	<b>Apprentice Outcomes</b>
Sound Transit	Not Available	33% low-income workers, 21% people of color, 12% women	For completed Central and Airport Link projects: 26% people of color, 7% women <sup>60</sup>	Not Available	20% apprentices; 33% women and people of color apprentices; 50% first-year women, people of color apprentices	For completed Central and Airport Link projects: 14% apprentices, 14% women apprentices, <sup>61</sup> 36% people of color apprentices <sup>62</sup>

Although each agreement is different, with provisions reflecting the unique needs and conditions of the project and the stakeholders involved, we identified a set of best practices based on the experiences found in the selected PLAs. These will be discussed in Chapter 6.

## Legal Implications of Project Labor Agreements

Courts have widely upheld the use of PLAs on public works projects for more than twenty years.<sup>63</sup> Carefully drafted PLA policies that make clear local governments are acting as market participants seeking the best value for their money have withstood legal scrutiny, or avoided challenges altogether.

The National Labor Relations Act (NLRA) governs labor organizing and the relationship between unions and employers. As a federal law, the NLRA supersedes any local law that contradicts it. The NLRA forbids state regulation of activities that the Act protects or prohibits, or that Congress intends to be left unregulated to facilitate the “free play of economic forces.”<sup>64</sup> Some have argued that PLAs are preempted by the NLRA because they regulate labor relations or interfere with the free market of construction labor.

These arguments have failed. In a 1999 decision called “Boston Harbor,” all nine Supreme Court justices decided unanimously that state and local governments were free to require PLAs as “market participants” acting in their own best interests and that of the taxpayers.<sup>65</sup> Laws requiring PLAs are not “state regulation” at all, according to the Supreme Court, but rather local governments bargaining for what is best for their jurisdictions. The substantial benefits of PLAs for local communities and the project delivery process justifies their use, time and again. PLA policies have been continually upheld as a decision of a market participant obtaining maximum value.

The market participant exception for local governments to require PLAs does not give carte blanche to local governments to require PLAs for every project in the City.<sup>66</sup> One exception may be private projects that receive favorable tax treatment, but not direct funding from the City. Another exception may be requiring that all contractors participate in apprenticeship programs that meet specific standards



imposed by the City, although this requirement has survived at least one challenge in a Ninth Circuit court.<sup>67</sup> Yet another may be if receiving federal dollars, where the federal agency withholds approval of a PLA for the project.

## TARGETED HIRE ORDINANCES

### What is a Targeted Hire Ordinance?

Targeted hire ordinances, also known as priority hiring ordinances, are legislation requiring that contractors hire targeted workers in public construction projects. Such ordinances create standards that apply to all construction projects covered by it. An ordinance can include various requirements such as hiring a percentage of disadvantaged workers, participating in registered apprenticeship programs, providing health and safety training, and supporting pre-apprenticeships and other training programs that reach out and service disadvantaged communities.

Targeted hire ordinances define the disadvantaged worker criteria. For example, in Cleveland, the targeted hire ordinance identifies disadvantaged individuals as low-income persons,<sup>68</sup> while in Milwaukee, targeted populations are defined as unemployed and underemployed residents.<sup>69</sup> In some instances, ordinances identify geographic areas such as census tracts or zip codes with high rates of poverty and/or unemployment, or other markers of economic distress to locate targeted populations. These census tracts or zip codes are then used to identify and prioritize access to construction employment and training opportunities. Disadvantaged workers can also include a single parent, formerly incarcerated, lacking a GED or High School diploma, or any other recognized barriers to employment. These criteria are designed to bring economic benefits to underserved communities. They offer a pathway for socially and economically disadvantaged individuals to access quality jobs with family-sustaining wages and benefits.

Targeted hire ordinances can also require that contractors use first source hiring programs or other construction employment referral systems for new hires on public construction projects. First source hiring refers to a process by which eligible individuals are given priority consideration for jobs, before the position is opened to other workers. Contractors first notify a designated clearinghouse—generally operated by a public agency or an assigned non-profit—when jobs become available, and the clearinghouse then refers eligible qualified targeted workers to the contractor.<sup>70</sup> In the case of other employee referral services, eligible workers register with the designated clearinghouse. When employers need assistance in filling job vacancies or meeting targeted hire goals, they submit requests to the employee referral system, and receive worker referrals that match their requested skills and qualifications.

CityBuild, the agency charged with overseeing and enforcing the Local Hire Ordinance in San Francisco, screens workers and verifies their residency, before placing them on an “Employer

Networking Eligibility” list.<sup>71</sup> When a job becomes available, contractors submit a job notification to CityBuild, and the agency refers workers to contractors by name. Contractors then select workers based on their needs and request their dispatch from unions.<sup>v</sup> Many collective bargaining agreements allow contractors to request workers by name from the union hiring hall, and dispatch them even if they are not at the top of the out-of-work list. According to Pat Mulligan, CityBuild Director, and Ken Nim, Workforce Compliance Manager, this is one of the ways by which the agency assists contractors to meet their targeted hire requirements.<sup>72</sup>

**Figure 9: San Francisco CityBuild Referral Process**



While CityBuild requires that workers be union members in good standing in order to be included on the “Employer Networking Eligibility” list,<sup>73</sup> other hiring referral programs assist union and non-union workers alike. In Milwaukee, for instance, the Resident Preference Program (RPP) maintains an active list of individuals who have been laid off for at least 30 days and/or have worked less than 1,200 hours in the preceding months.<sup>74</sup> Contractors requiring assistance place requests to any of the three agencies that provide RPP certification, and based on the qualifications needed, workers are referred to the worksite. Oakland’s Local Construction Employment Referral Program banks job seekers’ name, contact information and skill level in a database, and refers workers to open-shop contractors seeking skilled or unskilled workers.<sup>75</sup> In cases where unions do not have available Oakland residents to dispatch, union contractors can use the Local Employment Referral data bank to meet their targeted hire goals.<sup>76</sup>

## Key Advantages of Targeted Hire Ordinances

Targeted hire ordinances can create standards that ensure good jobs, incorporate training and require targeted hire goals. Those standards then apply to all bids for public contracts, and only those contractors that abide by the requirements qualify for contract awards. Furthermore, once the city establishes targeted hire requirements and adopts an ordinance, the terms remain consistent and in effect indefinitely without needing to develop new requirements with each project. According to community advocates, this represents a key advantage as community coalitions and other stakeholders may not always have the financial and other resources needed to negotiate the terms of project specific agreements, as it is the case with many PLAs.<sup>77</sup> An ordinance ensures the durability and uniformity of targeted hire goals.

<sup>v</sup> Over 95% of CityBuild referrals are union workers.

Because the ordinance is an institutional tool, adopted by city council and not any singular stakeholder group, it creates a level playing field for all stakeholder engagement, though participation can vary depending on access, capacity and resources of different stakeholders. Targeted hire ordinances can also provide resources for monitoring and enforcement structures, as well as hiring and training programs. Most ordinances reviewed in this report clearly define the responsibilities of each stakeholder, which in turn facilitates compliance with the targeted hire requirements. Additionally, a targeted hire ordinance can create strong opportunities for WMBE contractor inclusion, whereas a PLA may add requirements that are not normally accounted for by WMBEs in their bidding practices.

## Main Challenges of Targeted Hire Ordinances

Unlike project labor agreements, targeted hire ordinances cannot influence or change the union hiring hall priority referral system, and therefore depend on union buy-in to meet targeted hire goals. In the case of East Palo Alto's First Source Hiring Ordinance, the lack of union participation and buy-in posed numerous challenges, leading to poor targeted hire outcomes.<sup>78</sup> Unions continued to dispatch workers based on seniority, and not by residency as the initiative requires.<sup>79</sup> Cleveland's Resident Employment Law, on the contrary, is fully supported by the unions, who actively dispatch workers that meet Cleveland's targeted hire goals.<sup>80</sup>

In addition, unlike PLAs, ordinances do not include certain jobsite and workforce guidelines. First, they do not specify work conditions, which are set by city contract provisions or union agreements. Second, they cannot include provisions for no lockouts and no strikes since these are under the protection of the National Labor Relations Act. They also do not include dispute resolution mechanisms, which are generally set through city contract provisions or union agreements (see additional discussion on the differences between PLAs and ordinances in Chapter 4).

## Ordinances Reviewed

Findings on this report are based on the following six targeted hire ordinances:

- City of San Francisco **Local Hiring Ordinance**, adopted in 2010.
- The **Milwaukee Opportunities for Restoring Employment** ordinance of 2009.
- City of Richmond **Local Employment Ordinance**, adopted in 2006.
- The **Fannie M. Lewis Cleveland Resident Employment Law** of 2003.
- East Palo Alto's **First Source Hiring Ordinance**, adopted in 1996.
- City of Oakland **Local Employment (LEP) and Local Construction Employment Referral Programs** ordinance, adopted in 2001.

These ordinances have so far yielded different outcomes based on the types of jobs they cover, the targeted hire goals they set, and the hiring processes used to meet these goals. They also differ in terms of their built-in enforcement mechanisms, and the varying levels of community involvement and oversight. These will be discussed in Chapter 4. **Figure 10** summarizes the targeted hire goals and outcomes of these ordinances. We were only able to locate data on targeted worker participation before ordinances were adopted in the cities of San Francisco and Milwaukee.

In San Francisco, a study conducted by the Chinese Affirmative Action and Brightline Defense analyzed data from 29 public infrastructure projects and found that San Francisco residents performed 24 percent of the total project hours.<sup>81</sup> Upon the adoption of the targeted hire ordinance, participation of local workers increased to 32 percent in 2012. In Milwaukee, the M.O.R.E. ordinance increased the targeted hire requirements of the Resident Preference Program (RPP) from 25 to 40 percent. According to a 2008 report, a year before they adopted the ordinance, they estimated targeted resident participation at 30 percent.<sup>82</sup> Targeted resident participation increased to 46 percent in 2012.<sup>83</sup>

**Figure 10: Ordinances - Targeted Hire Goals and Outcomes**

	<b>Workforce Profile before Ordinance</b>	<b>Workforce Goals</b>	<b>Workforce Outcomes after Ordinance</b>	<b>Apprentice Participation before Ordinance</b>	<b>Apprentice Goals</b>	<b>Apprentice Outcomes after Ordinance</b>
City of San Francisco	From 2003-2010, 24% local residents <sup>84</sup>	25% local residents, 25% disadvantaged workers	In 2012, 32% local residents <sup>85</sup>	From 2003-2010, 18% apprentices	50% local residents, 25% disadvantaged workers	In 2012, 56% apprentices are SF residents
City of Milwaukee	In 2008, 30% local residents <sup>86</sup>	40% local residents	In 2012, 46% local residents <sup>87</sup>	Not available	No set aside	Not available
City of Richmond	Not available	20% local residents	27% local residents	Not available	Not available	Not available
City of Cleveland	Not available	20% local residents, 4% low-income workers	In 11/2013, 21% local residents, 11% low-income workers <sup>88</sup>	Not available	30% apprentices	For currently active projects 7%
City of East Palo Alto	Not available	30% local residents	In 2007, 23% local residents <sup>90</sup>	Not available	Not available	Not available
City of Oakland	Not available	50% local residents, 50% new hires must be local residents	In 2013, 40% local residents*	Not available	15% apprentices	In 2013, 11% apprentices

\*According to Jonothan Dumas - Local Employment Program Supervisor at the City of Oakland, the 10% shortage accounts for contractors that have provided employment in non-city projects or were given waivers due to lack of local worker availability.

## Legal Implications of Targeted Hire Ordinances

### **Pre-emption by the National Labor Relations Act (NLRA): Interfering with Collective Bargaining**

The National Labor Relations Act (NLRA) governs labor organizing and the relationship between unions and employers. As a federal law, it supersedes any local law that contradicts it. The NLRA forbids state regulation of labor practices and activities that the Act protects or prohibits, or that Congress intends to be left unregulated to facilitate the “free play of economic forces.”<sup>91</sup>

To steer clear of legal challenges under the NLRA, targeted hire ordinances should avoid directly interfering with collective bargaining agreements. The “safest” targeted hire ordinance will not require a union employer to hire targeted individuals from outside the hiring hall or to interfere with the priority referral system in order to meet targeted hire goals, unless the collective bargaining agreement contains provisions permitting this. Such requirements unilaterally change the hiring hall procedure designated in the collective bargaining agreement, and may be considered an unfair labor practice prohibited by the NLRA.<sup>92</sup>

Targeted hire ordinances are likely to survive legal challenges when they respect existing collective bargaining agreements. This can be accomplished through more modest requirements, like good faith efforts to recruit and retain targeted hires, or goals that increase in stages.

### **Violation of the Privileges and Immunities Clause: Discriminating Against Non-Residents in Local Hire Ordinances**

No local government may discriminate against non-residents simply because they are non-residents. Local hire ordinances must demonstrate a “substantial reason” for the difference in treatment between residents and non-residents to avoid violating the Privileges and Immunities Clause of Article IV of the U.S. Constitution.

Many local hire ordinances have survived scrutiny by justifying the preference for local residents. Justifications that amount to “substantial reasons” to discriminate against non-residents include, for example: high unemployment rates, the cost of unemployment to the local jurisdiction, and that the cost of higher unemployment rates and welfare benefits paid to unemployed local workers outweighs the benefits of hiring nonresident workers.<sup>93</sup>

Local hire ordinances are constitutional when data proves that the ordinance is designed to counteract high rates of unemployment and poverty.

### **Violation of the Equal Protection Clause of the 14th Amendment: Targeted Hire Ordinances that Preference Women and Minorities**

Targeted hire measures that preference race, ethnicity or gender (through mandatory requirements as opposed to aspirational goals or good faith efforts) must be narrowly tailored and show that such measures are the last resort and necessary to counteract past discrimination in the specific location and industry at hand.<sup>94</sup>

Per the Ninth Circuit, a city that implements targeted hire with preferences based upon race, ethnicity or gender must conduct a disparity study demonstrating past discrimination that proves a “compelling interest,” and must demonstrate that the targeted hire measure is “narrowly tailored” so as to remedy past discrimination with minimal current discrimination. Perhaps because this standard is so high, few targeted hire measures contain such preferences.<sup>95</sup>

The City of Seattle, Sound Transit and the Port of Seattle do not have a Disparity Study of workers from which to rely upon. None of these agencies have placed mandates into their targeted hire program.

Targeted hire ordinances that preference local residents or disadvantaged groups identified through means other than race or gender can survive Equal Protection challenges. These ordinances need to show that the measures are reasonably calculated to achieve a legitimate government interest, such as remedying poverty and unemployment.<sup>96</sup> That said, in Washington State this standard itself is a very high bar. Merely improving the region’s employment was found insufficient to merit a legitimate government interest.<sup>97</sup>

## ADDITIONAL TARGETED HIRE APPROACHES

While our study primarily evaluates ordinances or project labor agreements, there are also other targeted hire approaches available to public agencies.

### **COMMUNITY BENEFITS AGREEMENTS**

#### **What is a Community Benefits Agreement?**

A community benefits agreement is a legally binding contract between a broad community coalition and a developer. It seeks to address a wide range of community needs, such as job access, living wages or community infrastructure, and can include targeted hire provisions to increase hiring diversity.<sup>98</sup> In some cases, a community benefits agreement can have other signatories like public agencies, unions, and training providers. Since their introduction for the first time in Los Angeles in the early 2000s, community benefits agreements have evolved to encompass a variety of unique public and private agreements.<sup>99</sup>

Community benefits agreements have traditionally been negotiated for commercial and residential developments, in return for economic benefits, or in cases when there is a proposed land use change.<sup>100</sup> However, recent trends show that these agreements are increasingly used by local governments and becoming more institutionalized, as it is the case of Portland, Oregon.<sup>101</sup>

#### **Advantages of Community Benefits Agreements**

The negotiation of community benefits agreements requires meaningful collaboration between all parties involved and can provide a platform for community coalitions, public agencies, and contractors

to outline commitments and draft agreement language together. The process also allows for joint monitoring (between all stakeholders) and enforcement of targeted hire outcomes.

Since, in some cases, community benefits agreements have evolved to include PLA-like provisions and unions can become signatory to the agreements, community benefits agreements can influence union dispatch rules and establish contributions for training funds. They can also direct contractors to partner with community-based organizations to conduct outreach and recruitment in targeted communities.

## **Challenges Associated with Community Benefits Agreements**

Community benefits agreements can shift traditional power dynamics, as new coalitions form to advance community benefits. Their success is therefore largely dependent on strong partnerships and collaborations between all stakeholders involved.

Because community benefit agreements are highly localized in nature, the redistributive benefits and regulatory protections associated with the agreement only apply to a limited number of residents and employees.<sup>102</sup> In other words, hyper localized community benefits agreements exclude large numbers of urban residents who could otherwise benefit from citywide policies with similar targeted hire objectives. Furthermore, the associated costs of such localized community benefits agreements are levied on a small pool of contractors as opposed to cost levied on all contractors citywide.<sup>103</sup>

Another challenge associated with community benefits agreements is that community coalitions need to invest a great deal of resources, such as attorneys and experts, to assist them in the negotiation of the agreement. The monitoring of community benefits agreements outcomes also requires the expenditure of significant resources by all stakeholders involved.<sup>104</sup>

## **Example of Community Benefits Agreements: Seattle Dearborn Goodwill project and Community High-Road Agreement**

In Seattle, the first community benefits agreement was signed in 2008 for the Dearborn Goodwill project, a \$300-million retail and housing project.<sup>105</sup> Aside from commitments to build affordable housing and funding contributions for the construction of a community center, the agreement also stipulates a 15 percent apprentice utilization goal, the hiring of local residents through pre-apprenticeship programs, and contractor participation in WMBE business programs.<sup>106</sup>

Similarly, in 2010, Seattle adopted a Community High-Road Agreement for its \$100 million home energy upgrade program.<sup>107</sup> The agreement—negotiated between contractors, union, community-based organizations, training providers, public agencies, and financial institutions—established a set of sustainable contracting standards and community benefits. It included a 33 percent targeted hire goal for disadvantaged workers; a small business participation goal of 80 to 100 percent; a 30 percent participation goal for minority-owned firms and 10 percent for women-owned firms; and finally, increased participation for local and veteran-owned businesses.<sup>108</sup>

## Example of Community Benefits Agreement: City of Portland Community Benefits Agreement

In 2012, the City of Portland passed Resolution No. 36954 adopting a community benefits agreement template<sup>vi</sup> to be used as a basis to negotiate agreements on large-scale public works projects.<sup>109</sup> The resolution was presented in response to a 2009 City Disparity Study that showed statistically significant underutilization of minority-owned prime contractors on City Projects.<sup>110</sup> The City, in collaboration with the Metropolitan Alliance for Workforce Equity (MAWE)—a historic partnership between community, labor, workforce training partners and other stakeholders— drafted a community benefits agreement template to use as the basis for future negotiations. The template agreement includes provisions to:<sup>111</sup>

- Increase the utilization of disadvantaged workers (18 percent of hours worked by minorities, and 9 percent by women), apprentices (20 percent of total work hours) and certified WMBE firms (20 percent of the hard construction costs);
- Establish funds to support outreach, training, oversight and technical assistance for disadvantaged contractors; and
- Ensure continuous oversight and improvement of the agreement through a Labor-Management-Community Committee that is representative of all the stakeholders.

In addition, many of the provisions in Portland’s community benefits agreement template are modeled after PLAs; they require contractors to use hiring halls to obtain workers, provide grievance and dispute resolution mechanisms, and include a no lockout, no strike guarantee. The community benefits agreement template also includes special provisions for WMBEs (see Chapter 5).

The City is currently piloting the agreement on two Water Bureau projects totaling \$100 million. Initial reports on the two pilot projects indicate that targeted hire goals have been surpassed. In the Interstate Maintenance Facility Renovation project, minorities performed 24 percent of the hours during October 2013 and women performed 10 percent. In the Kelly Butte Reservoir project, minorities performed 31 percent of the hours worked, and women 10 percent.<sup>112</sup>

Currently, the City is analyzing outcomes from these two pilot projects, and gathering input from additional stakeholders to inform the negotiation of future community benefits agreements for specific major public works projects, anticipated to total \$15 million.<sup>113</sup>

One of the challenges associated with Portland’s template community benefits agreement policy is that it does not ensure that targeted hire goals will remain constant across project-specific agreements. However, efforts are underway to address this issue.<sup>114</sup>

### **CONTRACT PROVISIONS**

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vi We refer to the Portland community benefits agreement as a “template” as it is currently only being piloted on two projects and is still in the process of being fine-tuned before it is negotiated on other major public works projects.



## What are Contract Provisions?

Contract provisions are a set of standards that can be incorporated into agency contracts. Some contract provisions are requirements of local, state or federal law, such as anti-discrimination language. Contract provisions can include jobsite and workplace provisions including scope of work, dispute resolution, and labor standards. Contract provisions can stand on their own or can be written into the language of a PLA or an ordinance. Public agencies or city contracting departments can create a boilerplate contract that includes all provisions, which are then included in all contracts.

A public agency can set contract provisions specific to targeted hire goals. Provisions can include workforce and apprenticeship goals, instructions on hiring, training programs and WMBE participation. These provisions would then be included in all public works contracts.

## Advantages of Contract Provisions

Contract provisions allow governments or agencies to develop flexible and tailored boilerplate language that can be applied to all contracts under their purview. Contractors are already familiar with the use of contract provisions, and may therefore prefer that targeted hire goals be implemented through them.<sup>115</sup> Another advantage of contract provisions is that they establish a direct relationship between the public agency and the contractor, and both parties must adhere to the contractual obligations agreed on.

Depending on how targeted hire goals are articulated in the contract, non-compliance with the targeted hire goals can constitute a breach in the agreement and public agencies may withhold payment and/or assess liquidated damages.

## Challenges Associated with Contract Provisions

Contract provisions serve as guidelines and are not enforceable until each project contract is signed. In this way, they are individually negotiated on a project-by-project basis and only last over the lifetime of the contract. There is also very little community involvement, as the negotiations take place between contractors and the public agency.

## Example of Contract Provisions: Indiana Office of Community and Rural Affairs

The State of Indiana establishes basic targeted hire contract provisions for federal construction contracts under the Community Development Block Grant Program (CDBG). The specific contract provision for minority business participation requires that contractors and subcontractors maintain documentation supporting their best efforts to achieve the stated goal of 10 percent WMBE participation. Only those businesses registered on the Indiana Department of Administration's Minority

and Women's Business Enterprises List may be counted toward the 10 percent goal.<sup>116</sup> In addition, the general contract provisions, unless precluded by a valid bargaining agreement, ask that contractors conduct direct recruitment through public and private employee referral sources likely to yield qualified minority group applicants.<sup>vii</sup> Section 3 of the contract also requires that recipients of U.S. Department of Housing and Urban Development (HUD) funds, and their contractors and subcontractors provide jobs and other economic opportunities to low-income individuals from within the CDBG project service area. Similarly, the provision also requires the use of local businesses owned by low-income persons within those project areas.<sup>117</sup>

## **Example of Contract Provisions: Oregon Department of Transportation - Special Provisions for Highway Construction**

In 2013, the Oregon Department of Transportation (ODOT) issued a series of specifications, contract provisions and special provisions for highway construction bids. The contract provisions include targeted hire goals aimed at ensuring the adequate representation and utilization of minorities, by craft and trade, throughout the construction of the project. These include:

- Assisting in locating, qualifying, and increasing the skills of minorities and women who are applicants for employment or current employees;
- Providing opportunities aimed at developing full journey-level status employees in the type of trade or job classification involved;
- Encouraging eligible employees to apply for trainings and promotions;
- Providing documentation of data related to the number of minorities hired and the hours worked; and
- Developing on the job training opportunities or participate in training programs for the areas which expressly include minorities and women.<sup>118</sup>

The contract provisions also include on-site workforce affirmative action requirements for women and minorities on federal-aid contracts and subcontracts in excess of \$10,000, in compliance with Executive Order 11246 and the regulations in 41 CFR Part 60-4. These include goals for female and minority utilization designated by geographical area (6.9 percent statewide for female utilization and between 2.9 percent and 4.5 percent for minority utilization by county). ODOT also encourages the compliance with Aspirational Diversity Targets on all federally funded projects that ask for 14 percent women and 14 or 20 percent minority utilization, depending on the region. Contractors and subcontractors are under no obligation to meet these aspirational diversity targets.<sup>119</sup>

### **EXECUTIVE ORDERS**

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vii If the contractor has a valid bargaining agreement providing for exclusive hall referrals, the contractor is expected to observe the provisions of that agreement to the extent that the system permits the contractor's compliance with EEO contract provisions.

## What is an Executive Order?

An executive order is a directive or suggestion issued by the leader of the executive branch to staff and officials in the executive branch of government. Federal and state constitutions define the powers of all three branches of government—the executive, legislative, and judicial—and designate the control over certain agencies to the executive. In a city government, the executive is the mayor of the city. The executive branch of government includes any department designated by the city charter as under political control, usually by power of appointment, of the mayor.

Issued by the leader of the executive branch, executive orders are directives that “function as legal, policy, and political tools” and are used for a variety of purposes by the President, governors, and mayors.<sup>120</sup> The structure of executive orders provides the leader of the executive branch with the liberty to issue a directive for purposes that range from establishing state holidays, to appointing cabinet members or heads of departments, to broader policy decisions. For example, Seattle Mayor Ed Murray, recently issued an executive order to increase the minimum wage for all city employees.<sup>121</sup> As such, executive orders allow elected leaders to administer their basic responsibilities, but they also hold significant potential to influence policy on a broader scale.<sup>122</sup>

Once issued, executive orders may be overturned or modified by the issuing executive, subsequent executives, or the other two branches of government. The state or U.S. Supreme Court can nullify an executive order if a case challenging that order appears before it, and the legislature or city council can pass legislation that conflicts with the order or defunds it.

A targeted hire executive order can direct public agencies, municipalities and departments within the executive’s control to employ targeted hire strategies and to increase the participation of WMBE firms. It can also include an enforcement body and compliance measures for stakeholders who fail to meet targeted hire standards.

## Advantages of Executive Orders

Executive orders can be enacted unilaterally and quickly, greatly simplifying the policy-making process. They can influence or circumnavigate the legislative branch, so long as they affect agencies and actors solely reserved to the executive. Executive orders can also speed up the process of receiving federal funding by aligning themselves with targeted hire provisions set forth by higher government officials (e.g. federal guidelines with regard to expenditure of funds from the American Recovery and Reinvestment Act necessitates the implementation of specific targeted hire provisions).

## Challenges Associated with Executive Orders

Executive orders lack the stability of legislation. They may be overturned at any time if the issuing

executive has a change of heart, or by subsequent executives, without deliberation, notice or public comment. This risk of being modified or eliminated at any time means executive orders can easily and quickly become meaningless.<sup>123</sup> Furthermore, this type of unilateral policy making method can polarize different stakeholders, exasperate party politics and increase factions within parties.<sup>124</sup>

Executive orders are also disadvantaged due to the ambiguity of an executive's authority. The role of the executive evolves continually by statute, constitutional amendment, and accepted practice. For example, governors may locate their authority to issue an executive order in the state constitution; others, a state statute or federal law; still others an "implied" power of the executive branch.<sup>125</sup> This ambiguity invites lawsuits to challenge the authority of an executive to issue an executive order. It may also result in an unenforceable executive order. Executive orders without clear funding and enforcement power are little more than "forceful proclamations."<sup>126</sup>

### **Example of Executive Order: New Jersey's Executive Order 34**

New Jersey Executive Order 34, which created the Division of Minority and Women Business Development in 2004, has dramatically increased the percentage of public works contracts awarded to WMBEs. Executive Order 34 was enacted as a direct response to a disparity study conducted in 2004, which showed that while 48 percent of all small businesses in New Jersey in 2004 were WMBEs, just 2 percent of state procurement contracts were awarded to them. The executive order directed the state to achieve the following objectives:

- Develop MWBE utilization improvement goals and monitor procurement activity for all agencies and organizations;
- Establish standards and procedures to better enable agencies and organizations to meet their improvement goals;
- Obtain quarterly reports from each State department, agency, authority, college, and university relating to their purchasing and procurement activities;
- Create and maintain an electronic MWBE supplier database;
- Provide an annual report to the Governor; and
- Convene the Minority and Women's Business Development Advisory Council.

Executive Order 34 produced a steady increase in WMBE contracting. In 2008, WMBEs combined received 8.5 percent of all payments on prime contracts with State agencies in 2008, which includes 3.5 percent minority vendors (\$106.9 million) and 5 percent women vendors (\$152.1 million).<sup>127</sup>

### **Example of Executive Order: City of Detroit Executive Order No. 2007-1**

As part of the economic revitalization initiatives, the Mayor of Detroit issued Executive Order No. 2007-1, effective November 15, 2007, directing City departments and agencies to implement specific resident requirements on all construction projects funded in whole or in part by the City.<sup>128</sup> As such, Detroit residents are to perform at least 51 percent of the work hours, and must constitute 51 percent of the workforce. The residency requirements are valid for a range of job categories including officials, managers, service workers and apprentices.<sup>129</sup> The directive also applies to projects funded by state or federal funds, to the extent permitted by law.

Failure to meet the targeted hire requirements is considered a breach of contract and can result in monthly financial penalties of 3, 7, 10, and 15 percent based on the percentage of Detroit resident hours utilized on the project. The contract may also be terminated and, at the option of the City of Detroit, any firm, ranging from the developer and general contractor to the sub-contractor or lower-tier contractor, may be barred from doing business with the City of Detroit for one year.<sup>130</sup>

## **FREE MARKET**

### **What is a Free Market Approach to Targeted Hire?**

A free market approach to targeted hire implies that existing labor supply and demand trends should dictate the construction industry employment outcomes. As such, all construction labor market participants—contractors and workers—can freely broker their needs and services, without outside intervention from a public agency. Under the free market approach, the participation of WMBE firms and the number of disadvantaged workers employed is reliant on contractor demand, and contractors can choose to voluntarily hire these workers regardless of goals or quotas.

### **Advantages of a Free Market Approach**

A free market approach requires no further action from the public agency or contractors. Proponents against government-imposed targeted hire approaches, especially project labor agreements, state that interfering with the free market impedes on the competitive bidding environment and provides preferential treatment to unionized contractors and union tradespeople over merit shop businesses and employees.<sup>131</sup> Under a free market approach, no firms are excluded from the bidding process, and all workers can freely compete for job opportunities. Also, since no requirements are imposed and no documentation is needed, contractors do not have to invest resources to document and track targeted hire outcomes.

### **Challenges Associated with a Free Market Approach**

Many of the other targeted hire approaches reviewed here include monitoring and enforcement provisions that require reporting of targeted hire outcomes. Since a free market approach does not

require additional intervention from a public agency or from contractors, it is unlikely that either stakeholder would compile data on the number of disadvantaged workers hired, nor would they be able to identify gaps in the construction careers pipeline. A free market approach does not ensure the recruitment, hiring or retention of targeted workers. It also lacks compliance measures to address decreased or stagnant levels of targeted hire.

## Example of a Free Market Approach

We were unable to provide examples of municipalities that do not use any form of targeted hire tools. Data on the effectiveness of a free market approach is rather scant, as the majority of municipalities in the country use some sort of targeted hire tool or have requirements in place for the use of apprentices. Furthermore, it should be noted that, as a part of contracting with the federal government, contracts over \$10,000 automatically assume certain targeted hire obligations.<sup>viii</sup> In this case, every public agency that receives federal dollars is subject to some form of targeted hire provisions on federally funded projects.

## **RESOLUTIONS**

### What is a Resolution?

A resolution expresses the policy, official position, or intent of a legislative or public body. Municipal governments, including cities and counties, take official action by two means: resolutions and ordinances. Municipal agencies, such as water districts, ports and public utilities, may also issue resolutions. Whereas ordinances become law in a city's municipal code, resolutions provide guidance and are not legislative acts intended to become law. They may suggest penalties for violations, but generally address issues of narrow scope and/or temporary nature, and lack the enforcement mechanisms available to laws. Frequently, resolutions serve as separate evidentiary documents or delineate necessary procedures before a formal policy is developed. As one Washington court explained, "The term 'resolution' [...] ordinarily denotes something less solemn or formal than the term 'ordinance,' and, generally speaking, is simply an expression of the opinion or mind of the official body concerning some particular item of business or matter of administration coming within its official cognizance."<sup>132</sup>

In Seattle, either the Mayor or a member of Council can propose a resolution, which follows the committee process as a proposed ordinance would. However, Seattle's City Charter requires that every legislative act take place by ordinance.<sup>133</sup>

A municipality may consider adopting a resolution to express its intent and purpose in promoting targeted hire practice. Such a targeted hire resolution, as an interim measure, can serve three purposes. First, a municipality can present basic evidence of hiring and income disparities between the

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viii There are three sets of regulations that apply to contractors: Executive Order 11246, Section 503 of the Rehabilitation Act and Vietnam Era Veteran's Readjustment Assistance Act (VEVRAA).

target and the general population, a necessary predicate to ensure that a formal policy does not violate the Privileges and Immunities and Equal Protection clauses of the Constitution. Second, a resolution can recognize the need for further study to identify best practices of targeted hire approaches. Lastly, it can designate a timeline and responsible entities to develop a formal policy enacted by an ordinance.

## **Advantages of Targeted Hire Resolutions**

A targeted hire resolution can have profound long-term impact by signaling strong government support for increased diversity within the workforce and preferred approaches to achieve it. Where a resolution contains clear guidelines, roles, and expectations and enjoys great political support from the executive and the public, it may achieve its objective without further action and last into the foreseeable future. In Seattle, the process of adopting such a resolution provides opportunity for public comment and fact-finding to improve the policy language. Finally, resolutions pose little risk of Constitutional or other legal challenge because they lack the force of law.

## **Challenges Associated with Targeted Hire Resolutions**

The primary disadvantage of resolutions is their unenforceability. In addition, resolutions may be unsuitable for controversial issues that require a broad scope and promise great impact, or for which the city and the public intend permanent solutions.<sup>134</sup>

## **Example of Public Agency Targeted Hire Resolution: San Francisco Unified School District Resolution 1212-11A3**

In March 2013, the San Francisco Unified School District Resolution 1212-11A3 “Creating an Equitable Pathway to Community Contracting and Hiring” was approved by the Board of Education. The San Francisco Unified School District and a coalition of community advocates, organized labor representatives, local contractors, and San Francisco city officials backed the resolution, requesting that local disadvantaged communities be given greater access to good paying jobs on school district construction projects.<sup>135</sup> The resolution called on the Superintendent and his staff to draft and submit for Board approval a local hire policy that represents the commitment of the District to contract with San Francisco-based businesses, to hire local residents and to create pathways for District students to access good paying jobs in the building trades through a comprehensive internship program. The proposed Local Hire Policy suggests a minimum of 25 percent of total construction worker hours to be performed by local residents, and a minimum of 50 percent of the total apprentice hours be performed by local residents. Prime contractors would have to sponsor two internships for every \$2.5 million in construction contract value through the District’s Construction Internship Program. In addition, the proposed local hiring policy includes targeted goals for women (20%) and minorities (70%). For businesses, it outlines goals for local business participation (30%), minority business participation (35%), and women business participation (10%) for overall construction and non-construction services.<sup>136</sup>

## **RESPONSIBLE CONTRACTOR STANDARDS**

### **What are Responsible Contractor Standards?**

A responsible contractor policy is a set of enforceable specifications adopted by a governing entity and incorporated into a construction bid as a condition for performing work on public work contracts. These specifications can be standards for wages and benefits, evidence of compliance with certain laws, or specific standards set by the awarding agency such as apprenticeship training or targeted hire. Responsible contractor standards are intended to supplement existing contractor qualification and performance standards required by law, public policy or contracting documents.<sup>137</sup> Responsible contracting policies allow governing entities to select bidders not only based on the lowest bid but the lowest “responsible bid,” based on quality criteria and previous history.<sup>138</sup> Responsible contractor standards can be established for a single, large-scale project, or can be established as a matter of public policy, so that all construction projects undertaken by that agency are covered by responsible contractor standards.

### **Advantages of Responsible Contractor Standards**

Responsible contracting standards maximize contractor accountability and encourage a prudent and fair contracting process that can lead to better quality services and reduce hidden costs that can arise when workers do not receive living wages and benefits.<sup>139</sup> The standards also create increased competition between responsible contractors and provide incentives for contractors to perform successfully on project delivery in terms of quality, schedule and cooperation, as their performance can determine opportunities for future jobs.<sup>140</sup>

### **Challenges Associated with Responsible Contractor Standards**

Responsible contractor standards may limit the available contractor pool by excluding smaller contractors due to technical error in prior performance, or providing advantages to larger contractors who can more easily navigate certain barriers. Furthermore, the compliance mechanism is built into the bidding and award stage and is difficult to enforce during the project.

### **Example of Responsible Contractor Standards: City of Oregon, OH**

The City of Oregon, OH, evaluates prospective bidders based on their integrity, work history, experience, and staffing capabilities, among other criteria. In addition, contractors proposing to submit bids on any City of Oregon public construction project must include a statement of good faith estimate of the percentage of their workforce that resides in the City of Oregon, Northwest Ohio and/or Southeast Michigan.



## Example of Responsible Contractor Standards: Denver Metro Area

In November 2004, City of Denver taxpayers voted to invest in FasTracks, a mass transit expansion. A coalition of community, business, environmental advocates, and labor representatives spearheaded by FRESOC: Good Jobs—Strong Communities, proposed that the Regional Transit District incorporate targeted hire and apprentice utilization language into the Request For Proposal. The proposal included the following standards:

- Thirty percent of total work hours to be performed by local residents and 10 percent by disadvantaged workers;
- Fifteen percent of total hours to be performed by apprentices; and
- Fifty percent of total apprentice hours to be completed by county residents.<sup>141</sup>

As a result of the FasTracks project and a \$500,000 grant awarded in 2011,<sup>142</sup> the Workforce Initiative Now (WIN) was implemented to ensure that local residents are provided with opportunities to work on FasTracks. WIN's training program is regarded as an effective initiative, especially given its high success rate. About 50% of WIN workers originate "from zip codes adjacent to FasTracks corridor construction," and the job retention rate for WIN trainees is estimated at 94% percent.<sup>143</sup>

## HYBRID TARGETED HIRE APPROACHES

Targeted hire approaches can also be implemented through a combination of policy tools. The following are a few examples of hybrid approaches:

- **Ordinance Mandating the use of Project Labor Agreements with Community Workforce Provisions:** A public agency can enact an ordinance requiring the use of PLAs in different projects, setting criteria to determine what projects are to be covered by the PLA requirement. In 2014, the County of Sonoma, CA, approved a PLA ordinance mandating the adoption of project labor agreements in all federal and non-federal projects over \$10 million dollars.<sup>144</sup> The County set forth a template PLA to be adapted to each project, although a hiring requirement of 70 percent local workers is to remain constant in all agreements. The PLA Ordinance also sets forth requirements for pre-apprenticeships and technical workforce training programs for local workers.<sup>ix</sup> Other examples includes ordinances passed in the City of Watsonville, CA, requiring PLAs in projects at or above \$600,000,<sup>145</sup> and in the Town of Merrillville, IN, requiring PLAs for all construction projects receiving tax increment financing or properties granted tax abatements.<sup>146</sup>
- **Master Project Labor Agreement with Community Workforce Provisions:** A Master Project Labor Agreement is a PLA that applies to all projects within a public agency. A master PLA can function like an ordinance, but with the addition of a union workforce, worksite rules and targeted hire goals. A master PLA is negotiated once and applies to all projects under the purview of a public

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ix Local Workers are defined as those living in Sonoma, Napa, Marin, and Mendocino counties.

agency, such as the departmental PLA signed by the City of Los Angeles Department of Public Works. The PLA covers all construction contracts awarded by the agency's Board, and includes targeted hire provisions for local disadvantaged residents and apprentices.<sup>147</sup>

- **Resolutions or Executive Orders Calling for Project Labor Agreements with Community Workforce Provisions:** The federal government, the State of Washington, the Port of Seattle and Puget Sound Transit have all issued directives to support project labor agreements. In 1996, Washington State Governor Mike Lowry issued an executive order directing all state entities to consider project labor agreements for each public works project, along with a set of criteria to assist officials in deciding whether to adopt PLAs.<sup>148</sup> In 2009, President Barack Obama issued a similar executive order for federally funded public works projects.<sup>149</sup> In the Seattle regional area, many municipal bodies, including the Port of Seattle and Sound Transit, have adopted resolutions calling for the use of PLAs in projects whose budgets exceed a set figure.<sup>150</sup> In 2013, King County issued a directive that all county agencies with construction projects over \$25 million consider using a PLA on a project-by-project basis.<sup>151</sup> The directive required that specific elements were included every PLA, such as prohibiting discrimination in job referrals and hiring practices, and conformity to the voluntary apprentice utilization guidelines contained in the King County Code.<sup>152</sup>
- **Ordinance Mandating Pre-Apprenticeship and Apprenticeship Training Program Investment and Goals:** Public agencies can enact ordinances that support the utilization of pre-apprentices and apprentices in public works projects by setting goals and/or by dedicating funding streams. For instance, the City of Madison, WI, requires contractors to participate in approved Trade Training programs for every trade they employ on a project.<sup>153</sup> Snohomish County requires the utilization of apprentices on all public works construction.<sup>154</sup> King County's Apprenticeship Ordinance requires that contractors, on selected projects, have an apprenticeship training program in place, and devote at least 15 percent of their labor hours to apprentices.<sup>155</sup> Similarly, Seattle's municipal code requires that apprentices in training programs approved by the Washington State Apprenticeship and Training Council, perform up to 15 percent of contract labor on public works contracts of \$1 million or more.<sup>156</sup> The City of Seattle could choose to adopt a more robust ordinance, incorporating hiring requirements for pre-apprenticeship program graduates and/or lifting the 15 percent cap.
- **Ordinance with Responsible Contractor Requirements:** Public agencies can also enact ordinances that require targeted hire goals on projects, while also including contractor parameters such as worksite safety, worker benefits, and compliance. An example of this approach is the City of Worcester's, MA,<sup>157</sup> Responsible Employer Ordinance of 2008, which requires that contractors participate in a recognized apprentice training program and abide by the apprentice to journeyman ratio permitted by law. Contractors must submit the appropriate documentation verifying apprenticeship participation as part of their bid proposal. The ordinance also requires that contractors pay prevailing wage, provide accident insurance and safety training, designate proper classification of workers, and abide by other responsible contracting practices.<sup>158</sup>





## 4. COMPARISON OF TARGETED HIRE APPROACHES

Flexibility

Uniformity

Duration

Community Participation

Jobsite and Workforce Guidelines

Hiring and Workforce

Scope and Size

Comparison of Select Targeted Hire Initiatives

## COMPARISON OF TARGETED HIRE TOOLS

As reviewed in the last chapter, public agencies have many tools at their disposition to implement targeted hire initiatives. The implementation of each tool is unique and presents its own set of advantages and challenges.

### Flexibility

Project labor agreements, community benefits agreements, and contract provisions tend to offer greater flexibility because parties to the agreement negotiate their terms on a case-by-case basis. This allows contractors and unions to avoid fixed provisions that interfere with their business models or hiring hall procedures. On the other hand, this flexibility can also be a burden for certain stakeholders who need to spend resources on the negotiation of each agreement.

### Uniformity

Ordinances, executive orders and resolutions (where implemented) achieve consistency across all projects. Public agencies negotiate mandates only once and provide the infrastructure for negotiation or reviewing targeted hire outcomes. This dramatically reduces the time, effort and expense that each stakeholder needs to put in.

“Master” or “Blanket” project labor agreements and community benefits agreements can be set up so that the terms apply across a municipality, agency or multiple projects. For example, the City of Los Angeles’ L.I.G.H.T. Program requires the use of 30/20/10 (30 percent local hire, 20 percent apprentice utilization, and 10 percent disadvantaged workers) on all its PLAs.

### Duration

An ordinance becomes law and remains in effect, unless a sunset provision ends it at a fixed date. An executive order can also last through time, though it can be revoked by future executives, overruled or modified by courts, or defunded by the legislature or city council. PLAs, community benefits agreements and contracts have durations limited to the scope of the project or based on a specific time period (e.g.: 3 years, 5 years, etc.). These contracts can be extended or expanded.

### Community Participation

Of all the approaches reviewed here, community representatives or organizations can only be signatories to a community benefits agreement. Nonetheless, there are some opportunities for community participation in the other approaches reviewed. Community members can provide input, advocate, and apply political pressure to ensure that their targeted hire priorities are included in

ordinances and resolutions. In PLAs, community organizations can collaborate with or, if needed, exert pressure on project owners and labor unions (as well as contractors if owner-directed) to include their targeted hire priorities. Community organizations may be also signatories to agreements ancillary to the PLA, and may be involved in assisting the PLA implementation.<sup>159</sup> In any of the targeted hire approaches, public agencies can also create formal structures, such as joint task forces or oversight committees to include the community as a stakeholder with decision-making power.

## **Jobsite and Workforce Guidelines**

Project labor agreements provide uniform labor management that allows for methodical project planning and scheduling. A project labor agreement can be especially beneficial on a large-scale project. Parties agree to wage rates, benefits, work rules, safety provisions, scheduling, dispute resolution, and communication strategies before the bid process. PLAs supersede existing labor agreements that could otherwise conflict with targeted hire requirements, permitting unions to prioritize worker dispatch to address the project needs. These provisions are not typically part of ordinances, although they can be included in other tools such as contract provisions.

## **Worker Referral and Hiring**

PLAs require contractors to hire most workers through the union hiring hall process (see Chapter 3 on union hiring halls), but do not prohibit non-union contractors and workers from participating on a project. However, non-union contractors arguably and reportedly find a PLA environment difficult because it requires them to adjust their established work practices and utilize a blended workforce they may not be familiar with. Ordinances have more flexibility, allowing contractors to choose their own method for hiring through First Source Programs or other referral programs. As such, under an ordinance, contractors may still choose to hire from union hiring halls. Legally, ordinances should not override the union hall dispatch process, but unions can adapt their dispatch process to facilitate an ordinance's success. For example, priority can be given to targeted workers such that they can be dispatched ahead of a non-disadvantaged worker when a job opens up. Depending on the union, contractors may be able to request targeted workers by name regardless of their position on the out-of-work list, and/or can request workers for a specific skill or criteria. In this way, an ordinance's efficacy often depends upon union buy-in.

## **Scope and Size**

The scope and size of a public agency's construction projects are key in assessing what targeted hire approach works best. For instance, LAUSD, the second largest school district in the country, has multiple projects that are covered under their PLA. One Master PLA for all projects allows increased coordination, and the consolidation of monitoring and enforcement efforts, and guarantees that no project will be delayed as a result of work stoppages or lockouts by those signatory to the agreement.

**Figure 11: Average Construction Spending of Selected Reviewed Public Agencies and Municipalities**

	<b>Annual Spending Estimate:<sup>i</sup></b>
LAUSD PLA	\$1.8 billion
San Francisco	\$343 million
Cleveland	\$298 million <sup>160</sup>
Seattle	\$200 million
Milwaukee	\$51 million <sup>161</sup>

Another important factor in developing a targeted hire initiative is determining what projects will be covered. For example, an initiative can apply to all contracts, or only to those exceeding a given contract award amount.

**Figure 12: Contract Amount of Projects Covered in Selected Targeted Hire Initiatives**

	<b>Minimum Contract Amount</b>
LAUSD PLA	\$125,000 <sup>ii</sup>
Port of Oakland PLA	\$50,000
LACMTA PLA	All contracts
Sound Transit PLA	All contracts
San Francisco	\$400,000
Cleveland	\$100,000
Richmond	\$100,000
Oakland	\$50,000
King County	\$25 million
Port of Seattle <sup>162</sup>	No set contract amount <sup>iii</sup>

i Since the LAUSD PLA reported construction spending total to date, we calculated annual estimates by dividing these amounts by the number of years the PLA had been in effect at the time of the report (8 years).

ii Minimum contract size over which the LAUSD PLA rules apply is \$20,000 for specialty craft contractors and \$125,000 for general contractors.

iii The Port of Seattle performs an analysis to determine whether a construction contract would have a PLA. Size is a factor, but there is not a fixed threshold. As of March 2014, about 10% of the Port's regular construction contracts are under PLAs, but they constitute some 70% of the total construction contract dollars. (Figures are approximate.)

# COMPARISON OF SELECT TARGETED HIRE INITIATIVES

## KEY

- Yes
- No
- No Requirement, N/A
- No Data Available

	City of Los Angeles	LAUSD	LACMTA - Metro	Hayward Unified School District	Port of Oakland
Type	PLA	PLA	PLA	PLA	PLA
Date	Different	2003	2012	2009	2000
<b>GOALS</b>					
Hours vs. Workers	Hours	Workers	Hours	Hours	Hours
Mandatory vs. Good Faith	Good Faith	Mandatory	Mandatory	Good Faith	Mandatory
Targeted Hire Goals	Yes	Yes	Yes	Yes	Yes
Apprenticeship Utilization Goals	Yes	Yes	Yes	Yes	Yes
Small and WMBE Business Utilization Goals	No Requirement, N/A	Yes	Yes	No Requirement, N/A	No Requirement, N/A
<b>OUTCOMES</b>					
Met Targeted Goals	Yes	Yes	Yes	Yes	Yes
Met Apprenticeship Goals	Yes	Yes	No Data Available	No Data Available	No
Met Small and WMBE Contracting Goals	No Requirement, N/A	Yes	No Data Available	No Requirement, N/A	Yes
<b>Workforce Development</b>					
Dedicated fund for workforce training and outreach	No Requirement, N/A	Yes	No Data Available	No Data Available	Yes
<b>Hiring and Recruitment</b>					
Union Hiring Hall	Yes	Yes	Yes	Yes	No Requirement, N/A
First Source or other referral system	No	No Requirement, N/A	No Requirement, N/A	No Requirement, N/A	No Requirement, N/A
Limited number of core workers allowed	Yes	Yes	Yes	Yes	Yes
<b>Contractor Engagement</b>					
Conference/training on targeted hire requirements	Yes	Yes	Yes	Yes	Yes
Ongoing technical support and assistance	Yes	Yes	Yes	No Data Available	Yes
Promote partnerships with small and WMBE firms	Yes	Yes	Yes	No Data Available	No Data Available
<b>Monitoring and Compliance</b>					
Incentives/Penalties	Yes	Yes	Yes	Yes	Yes
Dedicate funding for compliance	No Data Available	Yes	No Data Available	No Data Available	Yes
Third-Party (Jobs Coordinator or Project Labor Coordinator)	Yes	Yes	Yes	No Requirement, N/A	Yes
Labor Management Committee	Yes	Yes	Yes	Yes	Yes
Agency monitoring	Yes	Yes	Yes	Yes	Yes
Multi-stakeholder oversight/advisory committee	No	No Requirement, N/A	No Requirement, N/A	No Requirement, N/A	Yes
Monitoring database	No Requirement, N/A	Yes	Yes	No Data Available	Yes
Data publicly available	Yes	Yes	No Data Available	Yes	Yes
<b>Community Involvement</b>					
Community partners in recruitment/training and support services	Yes	Yes	Yes	Yes	Yes
Community involved in oversight	No	No Requirement, N/A	No Requirement, N/A	No Requirement, N/A	Yes







## 5. IMPACT OF TARGETED HIRE ON WOMEN- AND MINORITY- OWNED BUSINESSES

WMBEs in Seattle

Challenges for WMBE Participation

WMBEs and Targeted Hire

A major concern in implementing a targeted hire initiative is the effect that new contracting procedures and requirements may have on construction firms owned by women and minorities. This section provides an overview of the landscape of women- and minority-owned business (WMBEs) in Seattle, their utilization in public works projects, and some of their challenges in successfully participating in public works projects. The chapter also provides a brief analysis of how other public agencies across the country have addressed WMBE utilization through targeted hire initiatives.

## WMBEs in Seattle

Seattle Municipal Code defines Minority and Women Business (WMBEs) for purposes of the city's own WMBE program as those in which at least 51 percent of the business is owned by a woman or minority.<sup>163</sup> The State of Washington further requires that for state or federal funded projects, the net worth of state-certified WMBEs not exceed \$750,000. Firms do not need to be State certified to meet the City's WMBE definition when bidding on non-federally funded public works projects.

In 2011, the City of Seattle through the Purchasing and Contracting Services Division, adopted an Inclusion Plan, replacing its 2002 Outreach Plan. The WMBE Inclusion Plan requires that contractors bidding on City of Seattle projects<sup>i</sup> greater than \$300,000 submit a plan detailing how they will include WMBE firms with the projects.<sup>164</sup> Each inclusion plan establishes a set of WMBE utilization aspirational goals that are not mandatory, contractually or legally binding, but are based on the contractors' good faith effort.<sup>ii</sup> Once the contractor volunteers the aspirational goals within the WMBE Inclusion Plan, these goals become binding as a contractually obligated definition of good faith effort by the contractor.

The Inclusion Plan functions through a scoring system that determines good faith efforts, and bidders can earn a maximum of 16 points. The bidder must earn a minimum of 10 points in order to be considered as an eligible bidder.<sup>iii</sup> Six points can be awarded to bidders who volunteer guarantees commitments to particular WMBE firms. Utilization of WMBE firms under the WMBE guarantee becomes mandatory if the bidder receives the contract award. The scoring system also encourages bidders to show aspirational intent to hire rarely used or underutilized WMBE firms. Primes are also expected to help underutilized firms overcome various barriers to entering the construction pipeline by assisting them in areas such as estimating, pricing, mobilizing payments, and insurance.<sup>165</sup>

An innovative feature of within the Inclusion Plan is the requirement to use a WMBE expert for Public Works projects over \$2 million. The WMBE expert provides prime contractors with expertise on social equity requirements and assists with the recruitment and utilization of WMBEs to comply

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i Projects with federal funding exempt.

ii Failure to achieve the aspirational goals set in the Inclusion Plan does not constitute a material breach of the contract.

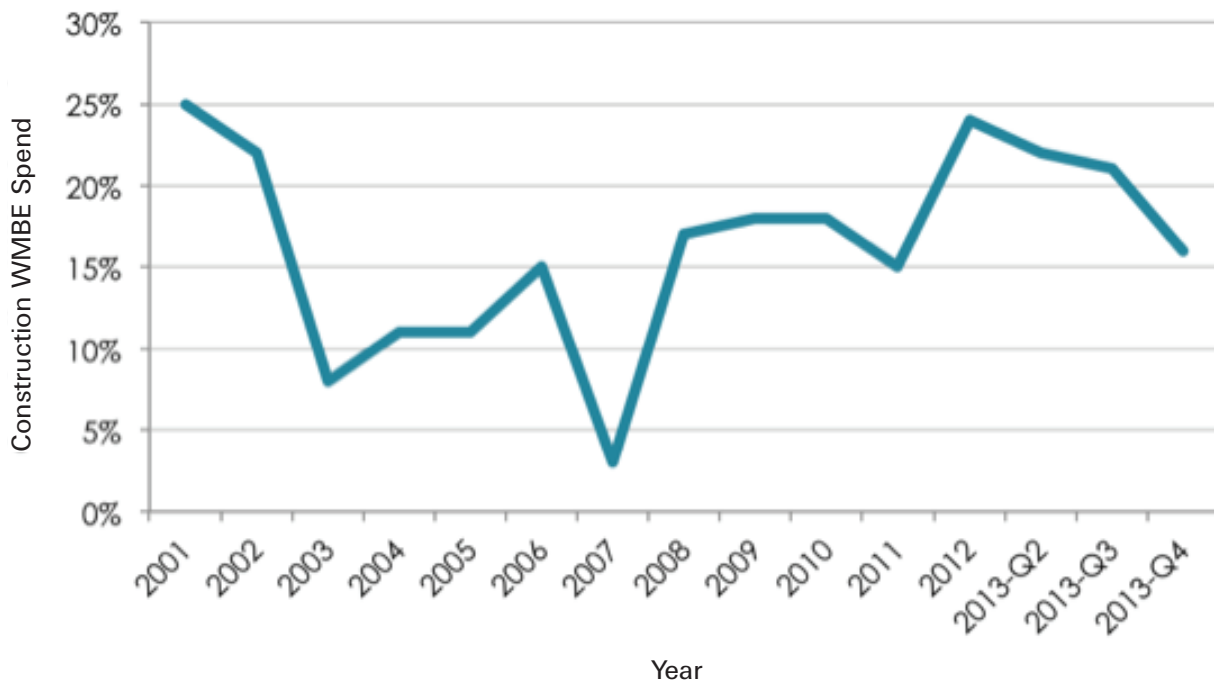
iii Discretionary self-performed work by a WMBE bidder can be tabulated as part of their aspirational goal. If the prime contractor is a WMBE, they must include only self-performance they intend to complete above the 30% minimum requirement.

with utilization goals and good faith efforts. The City maintains a consultant roster of experts that contractors can access. To be placed in that roster, individuals or companies can fill in an application form showing their proficiency and experience recruiting and working with WMBE firms in the construction industry. Some prime contractors will already have an expert on their team, who specializes in such work.

Before closeout and throughout the project, prime contractors are required to provide reports and documents that show evidence of WMBE utilization. While the goals set forth in the Inclusion Plan are aspirational, the good faith efforts are mandatory and the City may withhold progress payments from contractors and subcontractors who fail to submit reports tracking WMBE utilization or fail to document good faith efforts.<sup>166</sup>

Data from over the past 10-15 years show that the Inclusion Plan has brought positive results in terms of increased WMBE participation in Public Works projects. The chart in **Figure 13** shows an extreme drop in WMBE utilization between 2001 and 2003, attributed to the impacts of I-200 (described in Chapter 7). From that point on, however, the City initiated several efforts to work with WMBEs, and promoted an overall “cultural shift”<sup>167</sup> through a series of actions. These include executive orders addressing institutional racism and inclusion, race and social justice initiatives for contracting practices, and the appointment of designated in-house staff to ensure the inclusion of minorities.

**Figure 13: Construction WMBE Utilization in City of Seattle Public Works Projects 2001-2013<sup>168</sup>**



*Source: City of Seattle, Construction Completed Projects WMBE Spend.*

As can be seen in **Figure 13**, WMBE participation increased between 2011 and 2012, and remained above the 15 percent threshold.<sup>iv</sup> It should be noted that in 2012, \$8.3 million dollars or 60 percent of all payments made to WMBEs, went to WMBE primes.<sup>169</sup> This illustrates the City's commitment to increasing contracting opportunities not only for WMBE subcontractors, but at the prime contractor level as well. The drop seen in 2013 reflects several large projects that were completed that year, but had pre-dated the WMBE Inclusion Plan. If we look at contracts only subject to the WMBE Inclusion Plan, we see a pattern of increased WMBE utilization.

Also important to note is that the Inclusion Plan does not apply to federally funded projects, as these must comply with federal requirements that specify the use of disadvantaged businesses (DBE) (see definition in Appendix D: Glossary). For projects that receive federal transportation dollars, project owners must also produce "disparity reports" that specifically justify their goals for minority and women-owned contractors.<sup>170</sup>

## Challenges for WMBE Participation

Despite the recent increased participation of WMBEs in Public Works projects in Seattle, there still exists a number a barriers that prevent WMBE firms from successfully bidding and participating on publicly funded projects.

Representatives from WMBE firms indicated that one of the main challenges to participation is late payment from the City or prime contractors for work already performed.<sup>171</sup> WMBE businesses are generally small and late or nonpayment produces significant cash flow issues, which large firms are unlikely to experience. Many WMBE firms do not have the cash reserves or access to capital that would allow them to maintain their business operations in cases of late payments. To address this issue, the City recently launched a new prompt-pay contract provision that requires all contractors to pay subcontractors within 30 days of completed work, regardless of owner payment. The City continues to study and roll out contract changes that will further mitigate this impact on WMBE firms.

Another big challenge is the difficulty to meet insurance and bonding requirements, which is often a result of cash flow uncertainties.<sup>172</sup> WMBE representatives indicated difficulty accessing capital,<sup>173</sup> and are more likely to encounter higher borrowing costs, smaller loan amounts, and see their loan applications rejected often.<sup>174</sup>

WMBE representatives also indicated limited access to sufficient information needed to prepare successful bids.<sup>175</sup> This is particularly relevant for newer and underutilized WMBEs, who may not have enough experience navigating the bidding process. City data evidences that prime contractors routinely select the same WMBE subcontractors on different projects.<sup>176</sup> This in turn limits the opportunities for new WMBE firms to receive mentoring and access to the construction pipeline.

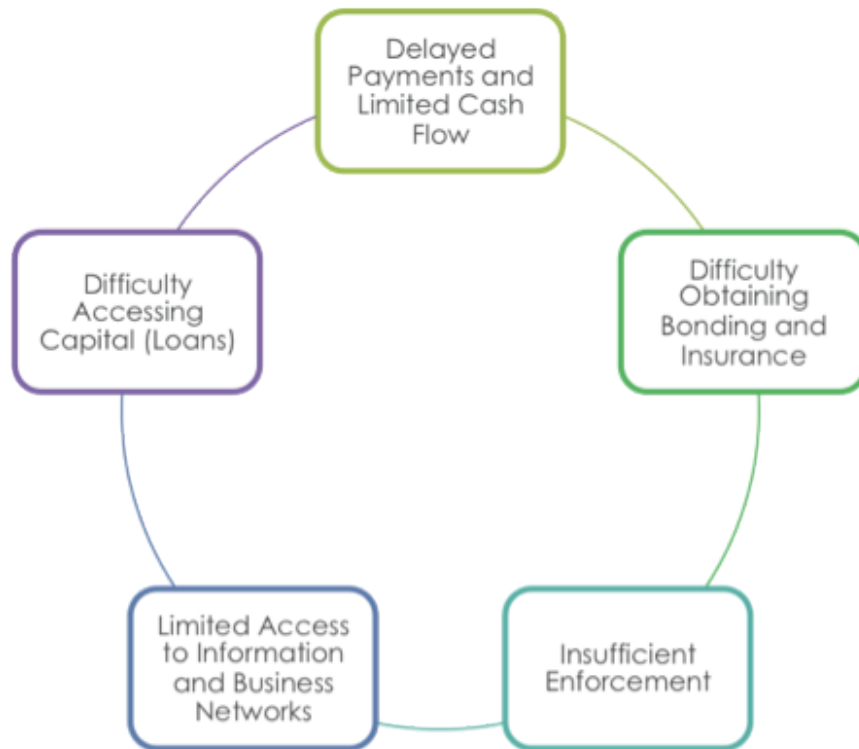
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<sup>iv</sup> 2013 Q4 data include the South Transfer Station - \$46 million project (13% WMBE) and the S. Spokane St Viaduct - \$23 million project (17% WMBE).

WMBE firms interviewed for this study also reported a lack of follow-up on the part of prime contractors to engage and extend business opportunities to WMBEs.<sup>177</sup>

Though the Inclusion Plan has increased the utilization of WMBE firms in public works projects, there is still ample room for improvement monitoring and enforcement mechanisms to hold prime contractors accountable. The only monitoring tool currently in place allows the City to issue deficient ratings to prime contractors if WMBE underutilization falls materially below commitments made. These ratings affect the firm's responsibility on future bids.<sup>178</sup> Insufficient monitoring and enforcement also allows firms to easily represent themselves as WMBE firms without consequences for misrepresentation. At present, to be recognized as a WMBE, contractors register on the City's Online Business Directory as self-identified WMBEs.<sup>v</sup>

**Figure 14: Challenges for WMBE Participation in Public Works Projects**



The City has put in place a number of tools and mechanisms that ensure WMBE awareness of opportunities and requirements and encourage prime contractors to fairly and equitably include WMBE firms in their sub-bid competitions. The City has used outside consultant firms to assist in conducting outreach, recruitment and capacity building of WMBE firms for City projects.<sup>179</sup> City of Seattle staff also plays a key role in facilitating WMBE inclusion, providing outreach and assistance to WMBE firms and guidance on how to do work with the City.<sup>180</sup> A member of Washington State Procurement Technical Assistance Center (PTAC) is also housed within City Hall as a shared resource. Moreover,

<sup>v</sup> Contractors and subcontractors do not need to be State certified to meet the City's WMBE definition. Projects that are federally funded transportation projects require a Disadvantaged Business Enterprise program and therefore need to be certified by the Washington State Office for Minority and Women Business Enterprises.

Mayor Murray plans to support an initiative to further develop technical assistance resources for small and WMBE firms that the City Purchasing and Contracting Services will develop in the coming year.

## WMBEs and Targeted Hire

Healthy WMBE businesses are a vital component of strong, sustainable communities, as they generate job opportunities for residents and underrepresented individuals. Research shows that minority-owned firms hire greater percentages of minority employees than majority-owned firms.<sup>181</sup> In Seattle, a recent UCLA study on Public Works hiring trends from 2009 to 2013<sup>vi</sup> found that WMBEs hired close to 42 percent of people of color, whereas non-WMBE firms hired 25 percent of people of color.<sup>182</sup> Hiring of women was slightly less among WMBE firms at 3.5 percent, compared to 5 percent for non-WMBE firms. The City recently launched LCPtracker software, which will soon generate additional data concerning the hiring rates of targeted individuals by WMBE and non-WMBE firms. This software requirement is so new that the city does not have any data to rely on at this time.

In selecting a targeted hire approach it is important to consider the effects it may have on WMBE firms and how their participation rate on public works projects might change. The following section provides an analysis of how each targeted hire approach could potentially affect WMBE firms, drawing from the case studies reviewed.

### **Community Benefits Agreements:**

Community benefits agreements may affect WMBE firms by including goals for their utilization. The City of Portland community benefits agreement template contains a goal of 22 percent WMBE utilization. The agreement is currently being piloted on two projects, and only preliminary progress reports exist at this time. One of the projects, Kelly Butte, surpasses this goal with 30 percent WMBE utilization. The other Interstate MTCE, falls short at just 19 percent WMBE utilization.<sup>183</sup> Both these figures show a dramatic increase from the 2009 8 percent WMBE utilization average.<sup>184</sup>

Also, since the Portland community benefits agreement includes PLA-like provisions, such as the exclusive use of union hiring halls for worker referrals, it has the potential to impact open-shop contractors, including WMBE firms. For WMBE firms certified as Disadvantaged Business Enterprises (DBEs) there is no limit to the use of core workers and no requirements to pay union benefits.<sup>185</sup> This carve out contains steep penalties for contractors who violate the agreement and worker prevailing wage requirements. For non-certified DBEs, the agreement allows up to 50 percent of the workforce plus one worker to be core employees.<sup>186</sup>

The Portland community benefits agreement template also includes provisions that encourage partnerships between WMBEs and disadvantaged business, and prime “opportunity contractors.” These ventures are eligible for bid discounts up to 5 percent.<sup>187</sup> The agreement also includes a provision sanctioning a technical assistance fund, in which the project owner agrees to dedicate

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vi The study analyzed payroll data for 136 contractors (primes and subs), 45 of which were identified as WMBEs.

a one-time amount of .50 percent for each million dollars in total project cost. The fund is used to assist WMBEs and disadvantaged business to secure bonding and necessary technical support to successfully complete a contract.<sup>188</sup>

### **Contract Provisions:**

Contract provisions may require potential bidders to exert a diligent effort to engage WMBEs and include them in their bid proposal, as it is the case with the Inclusion Plan in Seattle. While being attentive to I-200, the City of Seattle nevertheless has found and enacted effective requirements for WMBE utilization and other contract requirements that create a more effective contracting environment for WMBE firms and small businesses to participate more fully in city contracts. These include such things as the City's recent prompt payment requirement.

Through contract provisions, a municipality can demand that: 1) agencies utilize directories that only feature WMBEs for future construction projects, and 2) agencies work to allocate a percentage of construction work to WMBE firms. Due to I-200, the City of Seattle is currently constrained from using these tools, however they may be available to other jurisdictions. In the East Baltimore Development project, in addition to ensuring that agencies reference WMBEs first, the contract provisions also include a participation goals for WMBEs set at 35 percent—27 percent for minority-owned businesses and 8 percent for women-owned ones. However, no progress reports are available to measure compliance with WMBE goals.

### **Executive Orders:**

Through executive orders, a municipality can ensure that a "good faith" effort is exerted to engage WMBEs. The City of Seattle has used executive orders extensively to ensure citywide commitment to WMBE utilization, such as Executive Order 2010-05 directing outreach and increased contracting opportunities for women- and minority-owned businesses.<sup>189</sup> Another example is the State of New Jersey, where multiple sections of Executive Order 151 are dedicated to outlining/demonstrating what actions must be taken by reporting agencies in order for their efforts towards integrating WMBEs to qualify as "good faith" efforts. The executive order asserts that reporting agencies must contact the Division of Minority and Women Business Development about future contracting opportunities, reference certified WMBEs, and report to the Division on their efforts to engage WMBEs.

### **Free Market:**

Since a free market approach to targeted hire refers to allowing existing labor supply and demand trends to dictate the outcomes for employment in the construction industry, WMBE participation and engagement is likely to remain as is.

### **Ordinance:**

As mentioned in Chapter 3, targeted hire ordinances do not mandate the exclusive use of union hiring halls, and thus may offer a more inclusive contracting process for open-shop WMBEs. As long as they comply with targeted hire goals and document good-faith efforts, contractors can use their



core workforce with no limitations. If WMBEs, and other contractors cannot meet the targeted hire requirements, some ordinances such as San Francisco's and Milwaukee's encourage contractors to use city-sanctioned employee referral programs like CityBuild in the case of San Francisco,<sup>190</sup> or the First Source Employment Program (FSEP) in Milwaukee.<sup>191</sup>

Of the ordinances reviewed, only Milwaukee's M.O.R.E. ordinance include goals for WMBE or small business participation, which covers both the Resident Preference Program (RPP) and the Emerging Business Enterprise Program (EBE). The Milwaukee ordinance sets a utilization goal of 25 percent for emerging and small business participation, and mentor-protégé relationships between these business and large established firms.<sup>192</sup>

Other cities rely instead on WMBE provisions contained elsewhere in the City code or Federal WMBE requirements. In the City of Cleveland, WMBE provisions are covered by the Cleveland Area Business Code, which encourages joint ventures with WMBE firms, provides bid discounts for proposals received by WMBEs, and establishes annual WMBE utilization goals set by the Director of the Office of Equal Opportunity.<sup>193</sup> In 2011, the city set a 30 percent goal for small and WMBE firms, which was surpassed, reaching 49 percent.<sup>194</sup> WMBE firms won about 20 percent of all city contracts.<sup>195</sup>

A targeted hire ordinance can minimize negative impacts on WMBEs by exempting WMBE firms from certain requirements. Though none of the ordinances analyzed here took this approach, the City of Richmond's ordinance includes certain targeted hire requirement exemptions for small business.<sup>196</sup>

### **Project Labor Agreements with Community Workforce Provisions:**

PLAs affect contractor hiring practices, as they require workers to be referred through union hiring halls. For WMBE firms that are signatory to union collective bargaining agreements, no additional requirements are imposed as they already obtain their workforce from unions. However, for open-shop WMBE firms, PLAs may dramatically affect their hiring practices since they are required to work within union structures and have to limit the number of core workers they can use on projects covered by the agreement.

Representatives of WMBE firms indicated that this poses a substantial challenge for their business. WMBE firms tend to already have an established core workforce, many of whom would have to be rotated out and replaced with union workers under a PLA.<sup>197</sup> For example, if a small contractor has a workforce of 10 employees and is required to sign a PLA, the contractor could be forced to only bring 2 of his own employees to the jobsite. This makes it difficult for contractors to keep the remaining 8 workers if they do not have multiple projects going on at the same time. The majority of PLAs reviewed here allow up to 5 core workers, with the exception of the City of Los Angeles Department of Public Works PLA, which allows up to 10, and the Seawall agreement, which allows 2 core workers. Hence, open-shop WMBE contractors that participate in PLA projects perceive union hiring hall requirements and limits on core workforce utilization as a disadvantage to their business practices. For this reason, many opt out from participating in PLA covered projects altogether.

PLAs can offset the challenges experienced by WMBEs by including specific recruitment goals for women- and minority-owned business. Many PLAs either set aside goals for small business participation or the inclusion of other disadvantaged businesses, which can include women-, and minority-owned firms. They can also promote partnerships between small/disadvantaged businesses and larger majority contractors. Of the PLAs reviewed here, two include utilization goals for small and/or local businesses, though neither directly addresses WMBE participation. Scant data limits the ability of this study to adequately measure the impact of PLAs with community workforce provisions on WMBEs, however, because most WMBE firms tend to be small businesses, we can use small/local/disadvantaged business enterprises as a proxy.

Two of the PLAs analyzed included utilization goals for small businesses. The Los Angeles Unified School District PLA sets a goal of 25 percent for small businesses, while the Los Angeles Community College PLA sets forth a 28 percent goal for small, local, emerging, and disabled-veteran business enterprises. These goals were exceeded in both cases. From 2003 to 2011, LAUSD awarded 48 percent of all construction contract awards to small business enterprises, and achieved 44 percent small business participation at the prime contractor level.<sup>198</sup> Similarly, the Los Angeles Community College District awarded 54 percent of PLA covered construction dollars to WMBEs and small businesses during the 2003 to 2010 period.<sup>199</sup> Though the Port of Oakland PLA does not include a specific goal for small or local business participation, progress reports indicate that they awarded 90 percent of contracts to locally-owned businesses to date.<sup>200</sup>

### **Resolutions:**

As resolutions are not regulatory and rarely include enforceable mechanisms, it is unlikely that they have any effect on WMBE participation.



## 6. BEST PRACTICES TO STRATEGICALLY DEVELOP TARGETED HIRE INITIATIVES

Engage All Stakeholders and Facilitate Collaboration

Create Inclusive, Equitable and Realistic Targeted Hire Goals that can be Clearly Communicated and Measured

Educate Stakeholders and Communicate Goals

Develop a Strong System for Contractor Engagement and Promote WMBE Participation

Create Partnerships and Secure Funding to Identify and Recruit Targeted Workers

Invest in Pre-Apprenticeship Programs

Support Registered Apprenticeship Programs

Support Job Placement and Worker Retention

Create, Staff, and Fund a Robust and Active Compliance System

# Map to a Strong Targeted Hire Initiative

Targeted hire initiatives can increase economic opportunities and create career pathways for target communities and businesses. Regardless of the policy tool used, the following are critical components that make a targeted hire program successful.

## Engage all stakeholders

Engaging all stakeholders builds stronger, more collaborative initiatives, and cements commitment to produce better results over time.

## Create realistic targeted hire goals

To be effective, these goals should also produce specific and measurable outcomes that can be evaluated objectively.

## Invest in outreach and recruitment efforts.

Partner with community organizations, unions, and workforce development providers to recruit targeted workers.

## Develop contractor engagement

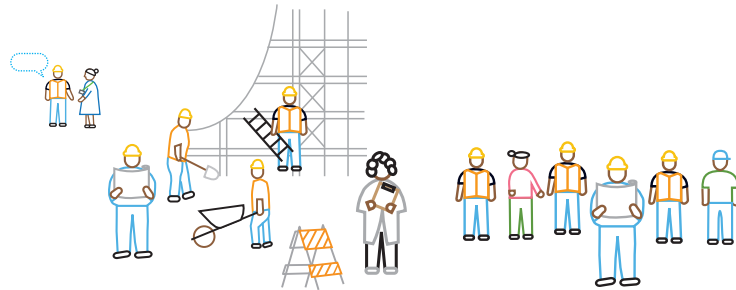
Anticipate contractors' needs and promote the participation of women- and minority-owned businesses. This makes it easier to implement targeted hire and diversify the contractor pool.

## Educate stakeholders and communicate goals

Educate all stakeholders about their roles in achieving successful targeted hire outcomes.

## Invest in Pre-Apprenticeship and Apprenticeship Programs

Comprehensive training programs are the key entryway for new workers into the construction industry.



## Support job placement and retention

Develop a well-defined referral and tracking system for apprentices and workers, and improve jobsite conditions to retain them.

## Create an active compliance system

This creates a level playing field in which contractors can compete and grow while meeting the targeted hire requirements. It also allows stakeholders to track performance and make necessary adjustments over time.

## SUCCEED

Positive outcomes with jobs for the community, increased collaboration, investment in the community, infrastructure, money that goes back into the community, middle class jobs with benefits.

In reviewing the different targeted hire approaches, we set out to assess which would best apply to the City of Seattle in its efforts to increase employment opportunities for women, people of color, and disadvantaged workers, with a priority for local residents. As we conducted our analysis, our research revealed a number of common best practices found across targeted hire initiatives that led to positive outcomes. The following section outlines each of these best practices, highlighting examples found in our case studies:

## 1. ENGAGE ALL STAKEHOLDERS AND FACILITATE COLLABORATION

The successful drafting, adoption and implementation of targeted hire policies rely on strong leadership and support from all stakeholders involved. A targeted hire initiative can bring unlikely allies into a new political relationship based on a shared agenda. It is therefore important to adopt a broad strategy for stakeholder engagement that can be measured in terms of its effectiveness in building constructive and inclusive working relationships and that span the entire life of a project.

### **Solicit stakeholder input and participation**

Though signed between a municipality and a consortium of labor unions, PLAs can offer other stakeholders spaces for negotiation, input and participation. Community and labor relations may not have been smooth historically, but communities can seek to integrate benefits in the PLAs that reflect their needs. According to Lanita Morris, Project Coordinator at the Los Angeles Black Worker Center (BWC), workers were regularly asked to present testimonies about their challenges accessing jobs on PLA projects in Los Angeles.<sup>201</sup> As a result of the increased collaboration between community and labor, the Los Angeles County Metropolitan Transportation Authority PLA “includes stronger language in support of diversity, stronger research-based disadvantaged worker criteria, and federal civil rights and equal opportunity language.”<sup>202</sup>

Ordinances also allow for such spaces of multi-stakeholder participation, as they often rely on strong political will within the city government, as well as support from community, labor unions, contractors, and other organizations. The public agency can solicit input through public hearings where stakeholders can voice their concerns and grievances, and/or can establish a multi-stakeholder advisory committee to review the design and implementation of a targeted hire initiative.

### **Assess and address stakeholders’ concerns**

Stakeholders should also consider existing conditions and concerns that may impact the implementation of the targeted hire initiative and reflect these in the policy language. For instance, in Richmond, CA, contractors were concerned that residency requirements would “obligate the hiring or firing of workers depending on the location of each public work contract.”<sup>203</sup> The City of Richmond Local Employment Ordinance tried to address this by including a “Non-City Project Hiring” clause.<sup>204</sup>

The clause states that “an employer who can adequately document the New Hire of a Richmond resident on any non-City project within one of the nine Bay Area counties [...] shall be entitled to credit the hours of that Richmond hire towards meeting the New Hire goals of this ordinance.”<sup>205</sup> As such, contractors may bank-in the number of hours worked by Richmond residents elsewhere in the region and use those to fulfill the City’s goals. The cities of San Francisco and Oakland have also included similar provisions to address the fluid and regional nature of the construction industry in the Bay Area.<sup>206</sup>

## Facilitate collaboration and partnerships

To develop an effective targeted hire initiative and secure stakeholder commitment, public agencies, unions, community organizations, faith-based groups, and contractors alike must acknowledge each other’s needs and interests, and recognize the necessity for cooperation and communication. Each partner needs to find common ground, and ensure they have flexibility to adjust and support the broader goal. Because establishing meaningful relationships takes time, it is important to start engaging with stakeholders as early on in the process as possible. Stakeholder engagement should be structured, and driven by well-defined strategies that lay out core objectives, a timeline and the allocation of roles and responsibilities.

In Milwaukee, WI, the M.O.R.E. ordinance was spearheaded by a coalition of city officials and community advocates. The strong partnership that formed between labor unions, workforce development agencies, and community organizations led to collaborative efforts to design and implement an ordinance that would strengthen the Resident Preference Program (RPP) and the Emerging Business Enterprise Program (EBE). In 2011, a State executive order and State legislation in 2012 suspended or barred several collective bargaining and workforce development provisions, including targeted hires for apprentices on state-funded projects. Pre-established stakeholder relations facilitated the creation of a coalition between the city, unions, community organizations and other stakeholders to review the ordinance and design a new initiative. Union leaders note that, “this collaboration would not have been possible 20 years ago, and trust across these stakeholders continues to grow.”<sup>207</sup>

In Portland, community organizations, labor, workforce training partners and other stakeholders have been working together to establish a targeted hire model. Though the negotiation has been challenging and tense at times, different stakeholders have had the opportunity to build stronger relationships with each other and cement their commitment to the targeted hire policy, which has served as a touchstone over the years.<sup>208</sup> The City recently adopted a community benefits agreement policy with targeted hire provisions, and stakeholders continue to work together on the implementation and enforcement phases of the two pilot agreements.

## 2. CREATE INCLUSIVE, EQUITABLE AND REALISTIC TARGETED HIRE GOALS THAT CAN BE CLEARLY COMMUNICATED AND MEASURED

A strong targeted hire initiative sets clear and concrete goals that are strategic, politically feasible, and legally defensible. These must be clearly defined in the policy's language, and should be responsive to the context and to stakeholder needs. Both PLAs and ordinances offer a platform to include a diverse set of targeted hire goals. The following best practices assist in goal setting and apply to any approach:

### **Research target communities and industry conditions**

Targeted hire goals can vary and depend on local conditions. It is important to understand which communities face barriers to accessing work or are impacted by the construction project. Therefore, before setting goals, public agencies should gather information about the demographics of the workforce, define areas that have high concentrations of poverty and under- and unemployment, and meet with community members and organizations to understand their needs. Appropriate goals are well researched and factor in workforce availability, demographics, and stakeholder input.

For instance, during the initial stages of the LAUSD PLA and the design of its We Build program, project coordinators worked with a research organization to compile data on the community. They gathered information on the number of workers in the area that could work on the construction project and gained a better understanding of who was in the construction pipeline.<sup>209</sup> Researchers found that less than two percent of African Americans were in the building program although they accounted for 11 percent of community, according to the 2004 census.<sup>210</sup> They found similar results for women and other underrepresented communities. As a result of this research, LAUSD's We Build program was able to shape outreach and recruitment efforts to increase the participation of targeted communities.

Also important is forecasting the demand that public works projects will create in the future. For example, with the recent adoption of a community benefits agreement, the City of Cleveland committed to fund and conduct a Demand Driven Workforce Study to determine both the near- and long- term demand for construction tradespersons (by trade discipline), construction administration and technology personnel (e.g. construction office, secretarial, accounting, safety, CAD, and support), and facilities maintenance personnel. This study will provide the basis for future workforce development initiatives.

### **Define targeted workers**

Goals should include the broadest possible range of socially and economically disadvantaged workers, but also within the limits of what is achievable. Target populations can be selected based on different criteria such as:

- Individuals residing in a census tract with a rate of unemployment in excess of certain percent (i.e. 150%) of the city or county unemployment rate;

- Having a household income of less than a certain percent (i.e. 80%) of the annual median income for the area;
- People of Color;
- Women;
- Veterans;
- Individuals facing one or two of the following barriers to employment:
  - Homeless
  - A custodial single parent
  - Receiving public assistance
  - Lacking a GED or high school diploma
  - Participating in a vocational English as a second language program
  - Has a criminal record or other involvement with the criminal justice system
  - Youth emancipated from foster care

These criteria can apply to established workers in the industry (i.e. journey-level) and/or can apply to new workers entering through apprenticeship programs. To ensure that training and employment opportunities are afforded to new workers, a targeted hire initiative can also include apprentice utilization goals, such as:

- Percent of hours to be allocated to apprentices;
- Requirement that a certain percent of apprentices be first year apprentices;
- A subset of apprenticeship hours to be performed by a disadvantaged group (e.g. women, minority, low-income, etc.);
- Direct entry agreements for eligible pre-apprenticeship graduates.

## **Establish a clear system to identify and track worker eligibility**

Once targeted workers are clearly defined, there should be a system to identify and track worker eligibility. The targeted hire initiative should establish the type of documentation workers need to provide (if any) to verify applicable targeted status criteria, and assign responsibility for the oversight of the verification process. Also important is to define how long this certification is valid.

In Cleveland, the Resident Employment Law includes hiring goals for low-income workers, defined as individuals whose family incomes do not exceed 50 percent of the median family income for the



area in which they reside.<sup>211</sup> Low-income residents can verify their eligibility by filling out a form and submitting income documentation to the City of Cleveland Office of Equal Opportunity (OEO).<sup>212</sup> Workers may retain their low-income status for a continuous five years provided: 1) they remain employed by the same employer who hired them as low-income workers; and 2) they remain Cleveland residents during the five year period.<sup>213</sup>

The Los Angeles County MTA PLA requires prime contractors to designate a Jobs Coordinator, responsible for screening and certifying the disadvantaged status of workers. The Jobs Coordinator is also tasked with maintaining a database of pre-qualified targeted workers and refers them to work on a project and/or enroll in a registered apprenticeship program.<sup>214</sup>

In Milwaukee, three community organizations and workforce development partners collaborate with the City to identify and certify eligible workers for the Resident Preference Program (RPP).<sup>215</sup> To get certified, individuals are required to provide income documentation and proof of address, and must have been laid off for 30 days and/or have worked less than 1,200 hours in the preceding 12 months. The certification is valid for 5 years assuming the individual resides in the same address during those years. To meet targeted hire goals, contractors must hire individuals who are RPP certified to perform work on covered projects.<sup>216</sup>

## **Set goals for hours worked rather than for number of workers**

Most of the targeted hire approaches reviewed defined workforce and apprenticeship goals as a percentage of total hours worked, rather than as a percentage of the total number of workers. Hours worked is a better indicator of worker retention as opposed to number of workers employed.<sup>217</sup> For instance, a worker may be hired to work on a project, but is only kept on the job for a short amount of time. That worker would count toward the targeted hire goals for number of workers, though the worker is not actually obtaining consistent, ongoing work. Workforce utilization goals should specify the percent of total hours performed by targeted workers. The oversight body can then compare these outcomes to the number of workers employed to document patterns of worker retention.<sup>218</sup> In the Los Angeles Unified School District PLA, local workers represented 38 percent of the total workforce and completed 41 percent of project hours worked. These numbers indicate that the workers remained employed in the project for a significant amount of time.<sup>219</sup> Similarly, in the Los Angeles Department of Public Works PLA, local workers comprised 28 percent of the total workforce and performed 33 percent of the total hours worked.<sup>220</sup>

## **Set realistic and achievable targeted hire goals**

It is important that the goals agreed upon are realistic and achievable. Since each municipality is different, and local work availability may change, each public agency has to study and consider what goals would be appropriate for their targeted hire initiative. In San Francisco, community advocates

sought a 50 percent targeted hire goal.<sup>221</sup> As a compromise, “stakeholders landed on a progression of increasing the local hire goal.”<sup>222</sup> The new ordinance was therefore designed with incremental goals: 20 percent in 2011, increasing by 5 percent every year until a 50 percent targeted hire is reached in 2017.<sup>223</sup> On the other hand, in Milwaukee, the City along with a coalition of community, workforce training, and labor partners noted that targeted hire goals had been consistently exceeded in previous years and supported the strengthening of these mandates. As a result, the 2009 Milwaukee Opportunities for Restoring Employment Ordinance increased the Resident Preference Program (RPP) goals from 25 percent to 40 percent.<sup>224</sup> Targeted hire goals may also depend on the type of work a project entails and certain goals, like those for direct entry, may not be appropriate for highly specialized work.

## Develop clear policy language

To facilitate compliance, unions and contractors should be clear on whether the targeted hire goals are aspirational—requiring “good faith” efforts—or mandatory. For “good faith” efforts to work, they must be clearly defined and should outline concrete steps for recruiting targeted communities. For example, the City of Los Angeles Department of Public Works PLA requires contractors to demonstrate that they: 1) adhere to their Employment Hiring Plan; 2) show proof of request to unions; 3) document contact with the Jobs Coordinator; and 4) provide other accurate records documenting compliance.<sup>225</sup> Barring any legal constraints, mandatory requirements may be needed in areas where good faith efforts continually fall short of meeting targeted goals.

Of the PLAs reviewed here, only the LAUSD and Los Angeles County MTA PLAs set mandatory goals, while the remaining four operated as “good faith” effort programs. Amongst the ordinances, Richmond, Oakland, East Palo Alto, and Milwaukee operate as “good faith” programs, while the San Francisco and Cleveland ordinances clearly stipulate “mandatory” goals. Local hire advocates in San Francisco pushed for mandatory hiring requirements because they found that previous good faith efforts continually fell short in meeting targeted goals.<sup>226</sup>

## 3. EDUCATE STAKEHOLDERS AND COMMUNICATE GOALS

Once the targeted hire initiative is designed, it is important to educate all stakeholders on the initiatives’ goals and steps needed for its implementation. In many of the cases studied here, key stakeholders highlighted the importance of increasing awareness of the benefits and responsibilities of the program to achieve successful outcomes. The following are a range of practices used by public agencies to effectively communicate with and educate stakeholders.

## Hold a pre-bidding conference and create educational tools for stakeholders

Before bidding for a project begins, the public agency can hold a conference or a workshop that goes over the terms of the targeted hire initiative, the role of each stakeholder, and the mechanisms and resources available to ensure compliance. Almost all of the PLAs and ordinances reviewed in this study require pre-bidding conferences. These conferences also ensure that contractors have the necessary information to share with their staff, and can plan accordingly in order to submit successful bids. In addition, the public agency may require a meeting with the winning contractors to review targeted hire guidelines and jointly create strategies to meet goals. In Oakland, prior to receiving notice to proceed, contractors are required to meet with Local Employment Program staff to review goals and the process for requesting job dispatches from the City's referral system.<sup>227</sup> Other stakeholders may attend such meetings as well.

Public agencies can also create educational tools that inform contractors about targeted hire requirements and resources available to assist them, while at the same time connect them with community and workforce development partners. These educational tools can help educate community members about the benefits of the targeted hire program, and the procedures necessary to access trainings and employment opportunities afforded by the targeted hire initiative. In San Francisco, public agencies conduct outreach events and information sessions to educate contractors and subcontractors about the local hire requirements and worker referral services provided by City Build.<sup>228</sup> The San Francisco Office of Economic & Workforce Development also hosts a local hire website where the public can access the ordinance itself, implementation plans, progress reports, presentation materials, and other materials relevant to the City's local hire initiative.

Pre-bidding conferences and other educational materials ensure that stakeholders have access to information and necessary tools to achieve positive targeted hire outcomes. According to the Los Angeles Department of Public Works, the most successful contractors make sure that their entire staff, from the payroll administrators to the project administrators, have a good understanding of and a willingness to meet the targeted hire goals, and are aware of the resources available to them.<sup>229</sup>

Similarly, Anabel Barragan, former We Build Program Manager, stated that "Through constant communication at quarterly labor management meetings, attendance at pre-construction, job start and weekly on-site project meetings [...] awareness and support for the We Build Program and its graduates [has increased]. Focused training sessions, sponsored by general contractors with their subcontractors, has ensured that all key players understand the District's goals and that local district residents are sponsored into union apprenticeship programs."<sup>230</sup>

## Share targeted hire goals within the public agency

Public agencies should also develop a plan to educate their staff on the targeted hire initiative. For instance, LAUSD and We Build organized internal workshops for program managers to ensure that the leadership within the large organization understood the PLA and its goals, as well as its impact on the organization's work. This created a culture of awareness and compliance within the organization that has proven key in achieving targeted hire goals.<sup>231</sup> In San Francisco, all City departments impacted by the Local Hire Ordinance worked together to review new requirements and develop a plan to carry them out. This included establishing sub-committees to: 1) develop new contract language to be included in bid specifications; 2) create a system of financial and non-financial incentives and penalties for non-compliance; and 3) create strategies to engage and educate different stakeholders.<sup>232</sup> Through this collaboration, City departments and their staff shared key information about the ordinance and developed a clear plan for its implementation.

## Require an employment hiring plan

To ensure that contractors and subcontractors understand the targeted hire requirements and actively engage with other stakeholders, public agencies may require them to submit an employment hiring plan. In it, contractors describe strategies to increase job access and meaningfully engage with hiring halls or alternative referral programs. This is an important tool to identify workforce needs, anticipate future challenges, and identify resources available to assist contractors to meet hiring goals. These resources may include employee referral services, or connecting contractors to apprenticeship and pre-apprenticeship programs.

The Los Angeles Department of Public Works PLA requires contractors to submit this plan prior to starting work. The Bureau of Contracting Administration then reviews the plan and determines whether it is approved.<sup>233</sup> In Milwaukee, contractors are required to submit to the City a resident utilization plan, detailing how goals will be achieved.<sup>234</sup> In Portland, the community benefits agreement template requires contractors and unions to provide a detailed recruitment and retention strategy, outlining anticipated project workforce needs, and a plan to meet targeted hire goals.<sup>235</sup>

## Hire a Jobs Coordinator or provide similar management mechanisms

Some of the initiatives reviewed use a Jobs Coordinator to provide a variety of functions: outreach, coordination between multiple stakeholders, and support to job seekers and workers. A Jobs Coordinator is a third-party individual, entity, or employee responsible for facilitating the implementation of targeted hire requirements. Most of the public agencies studied highly encourage the use of a Jobs Coordinator or a similar management mechanism. In some cases, having one can constitute proof of good faith efforts for compliance in cases where contractors are unable to meet targeted hire goals.<sup>236</sup>

The Cleveland Resident Employment Law requires contractors to designate a principal officer in their firm to be responsible for the resident hiring requirements.<sup>237</sup> Similarly, the Los Angeles County MTA PLA requires contractors to hire an approved Jobs Coordinator.<sup>238</sup> The Jobs Coordinator must be able to demonstrate experience and qualifications necessary to identify and recruit targeted workers, and provide referrals as appropriate to comply with targeted hire requirements. Miguel Cabral, Director of Economic Development Initiatives and Workforce Compliance, observed that a Jobs Coordinator addresses “issues with the prime [contractor] not knowing what to do or having the capacity to do what the PLA requires.”<sup>239</sup> To assist contractors, LACMTA maintains a registry of pre-approved Job Coordinators that contractors can easily access.

## **Engage and educate community partners**

Community organizations provide an organized voice on behalf of the targeted communities and can support workers entering the construction pipeline. A targeted hire initiative can connect with community operated employment resource centers, as seen in the Oakland Army Base PLA.<sup>240</sup> It can also establish community project oversight through multi-stakeholder committees. For example, the Port of Oakland’s Joint Administrative Committee created a Social Justice Subcommittee, consisting of community members, contractors, the project manager, the PLA administrator, and union representatives that monitor and oversee the project.

## **4. DEVELOP A STRONG SYSTEM FOR CONTRACTOR ENGAGEMENT AND PROMOTE WMBE PARTICIPATION**

A targeted hire policy that anticipates and addresses the needs of contractors, with a special emphasis on WMBE firms, can be successful in improving targeted hire outcomes and increasing contractor participation. Trainings and ongoing technical assistance can address contractors’ needs as well as connecting small contractors with larger or prime contractors. Though the following best practices are not exclusive to targeted hire, since they can exist separately, they can increase the participation of WMBEs and underrepresented firms, and increase contractor commitment to implement targeted hire.

### **Develop contractor training programs**

Resources for workshops and trainings are needed to disseminate program information and increase the capacity of contractors and WMBE firms to successfully compete for projects. For instance, LAUSD organizes a Small Business Boot Camp where small contractors receive the training necessary to successfully compete for bids in such areas as certification and bonding, pre-qualification, safety plan development, estimating and labor compliance.<sup>241</sup> LAUSD also offers a Contractor Money Works training, which is a free five-session seminar program in which participants receive financial information and fiscal training. These trainings have yielded positive outcomes for small business:

from 2003 to 2011, LAUSD awarded small business firms \$4.2 billion in construction contracts.<sup>242</sup> This amounts to 48 percent of total construction contract dollars during that period.<sup>243</sup>

Other public agencies also offer training programs to contractors, especially since many have adopted new workforce compliance monitoring technologies. In Cleveland, contractors can take free B2GNow and LCPtracker classes every other week, and can also access these online.<sup>244</sup> In Milwaukee, the City has implemented a Business Capacity Building Program for small businesses, and it organizes networking events, information sessions, B2GNow software training, and conference presentations.<sup>245</sup>

## **Provide technical assistance**

Municipalities can provide ongoing technical assistance to ensure that contractors get the support they need to compete and complete the project. The Port of Oakland PLA includes provisions for the PLA administrator to meet with contractors experiencing difficulty in meeting local hire goals to design and develop strategies to successfully meet them.<sup>246</sup> In Portland, the community benefits agreement template also includes a dedicated fund to provide contractors with technical assistance.<sup>247</sup> As such, the project owner provides a one-time contribution of .50% for each \$1 million for a Technical Assistance Fund, used to assist WMBE firms to secure bonding and access business support.<sup>248</sup> Seattle WMBE representatives indicated that the City could increase WMBE participation by offering classes on how to prepare successful bids, build a prime, and secure insurance and bonding.<sup>249</sup> Some WMBEs even indicated that receiving feedback when failing to secure contracts would be helpful for future biddings.<sup>250</sup>

## **Create mentorship and networking opportunities between large and small contractors**

Public agencies can facilitate opportunities for large contractors to work with and support small contractors. For instance, LAUSD hosts a series of job fairs and “Meet the Prime Contractor” events to increase networking and collaboration amongst different contractors.<sup>251</sup> The cities of Cleveland and Oakland have mentor-protégé initiatives that encourage partnerships between prime contractors and small or disadvantage businesses.<sup>252</sup> The City of Oakland gives a 5 percent bid preference for Mentor Protégé teams. The City of Seattle has a mentor-protégé initiative underway for the City Public Works Alternative Delivery contracts.

## **5. CREATE PARTNERSHIPS AND SECURE FUNDING TO IDENTIFY AND RECRUIT TARGETED WORKERS**

Many community organizations, unions, and workforce development providers actively recruit candidates for training or placements in construction jobsites. The following are some of the

strategies public agencies use to facilitate partnerships between these stakeholders with contractors to outreach and recruit workers.

## **Connect outreach and recruitment partners with contractors**

The Port of Oakland PLA requires that meetings are held between PLA administrators, trade unions, apprenticeship and pre-apprenticeship coordinators, and community-based organizations to collectively design strategies that engage local residents in PLA project work.<sup>253</sup> Informational workshops and targeted marketing campaigns are some of the strategies used to connect individuals with training programs.<sup>254</sup> The Portland community benefits agreement template requires stakeholders to develop a plan to recruit minorities, women, and low-income individuals into a pool of pre-qualified applicants that may be referred for immediate employment. The Economic Opportunity Initiative, “a project of the City of Portland and Construction and Apprenticeship and Workforce Solutions, a workforce intermediary led by the local workforce board,” each play a role in funding and coordinating the work of various program providers to facilitate targeted outreach and serve Portland’s low-income populations.<sup>255</sup>

## **Provide recruits with necessary support services**

Some of the initiatives reviewed in this report use community-based organizations and/or construction training programs as sources for recruitment, referral and support services. These programs provide participants with valuable skills assessments, identify participants’ needs and coordinate support services to ensure they get the best start. Many targeted hire programs however, still lack adequate program support to provide funding and resources needed to conduct outreach and provide recruits with necessary support services. A targeted hire initiative could establish agreements with support service providers, so new recruits can use them for essential services such as childcare or transportation subsidies.

For instance, the City of Oakland has established partnerships with pre-apprenticeship programs and a network of over 35 community-based organizations to serve different constituencies and provide them with the necessary support to enter the construction trades.<sup>256</sup> The City has also considered the establishment of a revolving loan/grant fund to assist new workers with the purchase of tools, clothing, and to cover other costs associated with the initiation fees for registered apprenticeship programs and union labor organizations.<sup>257</sup>

In San Francisco, recruitment and support services are provided through many of the City’s community-based workforce development programs, which refer new workers to CityBuild Academy. These community partners are known as “Comprehensive and Neighborhood Access Points,” and provide job seekers with a wide range of supportive services, such as career planning and exploration, job preparation, access to resources like computers and printers, childcare and transportation,

and unemployment information.<sup>258</sup> These access points are strategically distributed in different neighborhoods to ensure enough coverage around the city.

## Provide funding and resources for outreach and recruitment

Community organizations, training providers, and other stakeholders actively outreach in target communities and disseminate information about education and employment opportunities. To do so, they need financial resources that a targeted hire initiative may provide. For example, Portland's community benefits agreement template dedicates 1.5 percent of the total construction project budget to a fund that supports outreach and training for women and people of color and provides technical assistance and support to contractors of color and women contractors.<sup>259</sup> The fund also sets aside resources for the monitoring and enforcement of the agreement itself.

The Port of Oakland's Social Justice Trust Fund requires contractors to make a contribution of 15 cents per craft hour.<sup>260</sup> The funds are used to reduce employment barriers for historically disadvantaged local area residents, primarily by funding the costs of the Social Justice Program. The Trustees of the Fund, upon the recommendation of the Social Justice Subcommittee, give out grants on an annual basis. In 2011, a grant of \$10,000 was awarded to the Oakland Workforce Collaborative, a collaborative of multiple community-based organizations who identify and retain Oakland-based apprentices.<sup>261</sup> Since the inception of the Social Justice Trust Fund, about 16 grants have been awarded for a total of \$382,000. Unfortunately no grants have been given out since 2011 given the low levels of work under the PLA over the past few years.<sup>262</sup> This illustrates the idea that the availability of work is the main driving force behind the demand for training.

The City of Oakland has also considered allocating funding secured from development agreements.<sup>263</sup> Development agreements often include monetary contributions from socially responsible developers that can be used for training or outreach programs.<sup>264</sup> City of Oakland Local Employment Program staff commented that, "given the reduction in [...] revenues available to assist with workforce development, the inclusion of greater private sector support is needed to address the ever increasing need for such resources. It can be argued that [developers and contractors] benefit from this provision [...] by improving the economic health of the community in which [construction] is occurring."<sup>265</sup>

## 6. INVEST IN PRE-APPRENTICESHIP PROGRAMS

Pre-apprenticeships are workforce development programs that prepare people, particularly low-income individuals and non-traditional construction workers such as women and people of color, to enter the construction trades. These programs bring significant value to the construction industry; they conduct the initial outreach, recruitment, and screening of potential employees, and provide contractors with a workforce that is prepared with the necessary skills and knowledge for entry-level work. Since pre-apprenticeship programs provide training and services for targeted individuals and are portals to



diversity hires that help contractors meet hiring goals, any targeted initiative should invest in these programs and facilitate resources for their success. The following are some of the best practices to support and fund pre-apprenticeship programs.

## **Facilitate networking opportunities for pre-apprenticeship programs and key stakeholders**

In order to ensure the provision of meaningful construction career opportunities and to maintain their relevance in the industry, pre-apprenticeship programs must develop and maintain strong relationships with construction contractors, apprenticeship programs, trade associations, unions, and other community-based partners and agencies. Aside from networking opportunities, these relationships help pre-apprenticeships forecast industry demand and skills needed, so they can adjust their programs accordingly and train participants to successfully enter registered apprenticeships.

In Portland's community benefits agreement, through the work of the coalition and the establishment of a labor-management-community committee, pre-apprenticeship providers are able to build on the relationships they have established with unions and other stakeholders over the years.<sup>266</sup> As Connie Ashbrook, Executive Director of Oregon Tradeswomen Inc., commented, "contractors, owners and other interested parties are at the table planning in real time as the issues emerge and then we can solve them right away instead of after the project is built."<sup>267</sup>

The workforce intermediary tasked with centralizing recruitment, pre-apprenticeship training, and job referrals in Milwaukee, the Wisconsin Regional Training Partnership/BIG STEP (WRTP/BIG STEP), has built a strong partnership with local unions, apprenticeship programs, industry associations, and contractors.<sup>268</sup> Working alongside these stakeholders to meet the Resident Preference Program goals has further increased this collaboration and improved real time feedback on current industry trends.<sup>269</sup>

## **Dedicate funding for pre-apprenticeship programs**

Pre-apprenticeship programs can also benefit from increased and diversified funding sources. Funds for outreach, recruitment and service provision are often very limited. Hence, increased funding would directly translate into more opportunities and programing for women, people of color, and disadvantaged individuals.

In Portland, with the adoption of the community benefits agreement, the City committed to increasing and strengthening existing pre-apprenticeship and high school-to-registered- apprenticeship programs. The Portland community benefits agreement template also stipulates the creation of a Project Specific Community Construction Training Fund that gives grants to approved pre-apprenticeship programs and community-based organizations to provide training opportunities for community members. The fund consists of a one-time amount of 0.75 percent for each \$1 million dollars in total project cost.

The Port of Oakland PLA requires contractors to contribute \$0.15 per hour worked to a Social Justice Trust Fund used to support local pre-apprenticeship programs.<sup>270</sup> Sound Transit in its PLA also established an agency contribution of no less than \$0.05 per hour worked to a Pre-Apprenticeship Training Program Fund (see Chapter 7).<sup>271</sup>

## **Develop direct entry agreements or similar provisions to place pre-apprenticeship graduates on apprenticeships and jobsites**

A targeted hire policy can help shape successful pre-apprenticeship outcomes by establishing a direct-entry system for pre-apprenticeship graduates. This means that apprenticeship programs “agree to reserve a percentage of their available apprenticeship slots to qualified workers who also fit into a targeted hire category.”<sup>272</sup> Graduates of these programs that meet entry qualifications do not have to wait for open enrollment to start and instead go right into apprenticeships.<sup>273</sup> This allows them to “go to work sooner and means they are less likely to lose motivation or pursue other opportunities.”<sup>274</sup> Though the direct agreement approach is still in a stage of innovation, many apprenticeships and pre-apprenticeships in several cities have established direct entry opportunities.<sup>275</sup> For instance, the Carpenter Training Committee for Northern California has established a direct entry agreement with CityBuild in San Francisco<sup>276</sup> and the Cypress Mandela Training Center in Oakland.<sup>277</sup> In Seattle, the Seawall CWA also provides direct entry for pre-apprenticeship graduates, with a goal of one direct entry placement for each five apprentices on the project.<sup>278</sup>

## **7. SUPPORT REGISTERED APPRENTICESHIP PROGRAMS**

Most new entrants into construction careers enter through apprenticeship programs. These programs allow individuals to “earn while they learn,” by combining related technical and classroom instruction with paid on-the-job training. Registered apprenticeships help shape the construction industry as they help contractors meet their demand for skilled workers, raise overall productivity, improve worker safety and increase retention rates. They also play a major role in providing disadvantaged workers, women and people of color access to construction jobs.<sup>279</sup> The following are some of the ways in which a targeted hire initiative can support registered apprenticeships.

### **Set apprentice utilization goals**

Targeted hire initiatives may require that every contractor on a covered project participate in a registered apprenticeship program, and that they hire apprentices to work on the project at the maximum ratios allowed by state and federal law.<sup>280</sup> Moreover, they can also require that apprentices perform a certain percent of the hours worked on a project; thus, maximizing on-the-job training opportunities for apprentices.

Most of the programs we reviewed included apprentice utilization goals. The LAUSD PLA states that up to 30 percent of the workforce for each craft may be apprentices, of which 40 percent must be first year apprentices.<sup>281</sup> The Portland community benefits agreement template also sets a 20 percent apprentice utilization requirement, and of the hours performed by apprentices, 18 percent must be performed by people of color, and 9 percent by women.<sup>282</sup> The Los Angeles Department of Public Works PLA also includes a 20 percent apprentice utilization goal. In these three cases, apprentice utilization goals have been met and these programs have been successful in maximizing opportunities for apprentices (see Chapter 3).

## **Incentivize the retention of apprentices in their 2nd through 5th year of apprenticeship**

While apprenticeship programs can offer quality education, training and placement opportunities, apprentice retention can be a concern. Apprentices can drop out of registered apprenticeship programs for multiple reasons including personal issues, performance problems on the job or in the classroom, or gaining craft certificates before program completion. A targeted hire initiative can increase apprenticeship retention by establishing a formal mentoring program that “provides apprentices with ongoing attention and regular evaluation.”<sup>283</sup> It can also direct increased oversight of apprentices’ job rotation to ensure that apprentices get enough opportunities to complete the required on-the-job hours to journey-out.

## **Promote contractors’ engagement with apprentices**

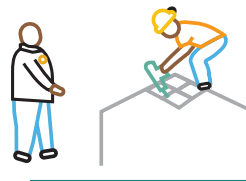
Aside from requiring a certain percent of the work to be completed by apprentices, a targeted hire initiative can allow hiring of apprentices to meet targeted hire goals. For instance, in Oakland, utilization of Oakland apprentices count toward the 50 percent new hires and 50 percent local workforce goals.<sup>284</sup> In Milwaukee and Cleveland, contractors may use hours worked by apprentices in recognized programs to achieve targeted hire goals.<sup>285</sup>

# Pathway to Construction Careers



## 5. Career Advancement

Additional training and added job experience increase workers' wages and leadership skills, and can offer new career opportunities such as management or business ownership.



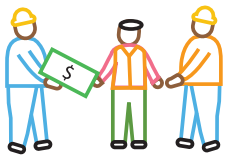
## 4. Continuing Education

Workers continue to learn through continuing education programs that train on new technologies and tools in the industry.



## 3. Work

Once trained, workers can begin to work in various types of construction jobs and earn higher journey-level wages.



## 2. Apprenticeship

Registered apprenticeships allow individuals to “earn while they learn,” combining related technical or classroom instruction with structured and paid on-the-job training.



## 1. Pre-Apprenticeship

Pre-apprenticeships offer basic skills training to prepare new workers to enter the construction trades. They also provide support services such as tools, safety equipment, and transportation subsidies.

Apprentice graduates in Washington State earn approximately **\$225,000 more** over the course of their lifetime than comparable job seekers.

## 8. SUPPORT JOB PLACEMENT AND WORKER RETENTION

A targeted hire initiative should identify mechanisms for referring targeted workers and apprentices to work on projects, and ensure that they get consistent, ongoing work whenever possible. The following are some of the mechanisms established by some of the targeted hire initiatives reviewed in this report to support job placement and promote worker retention.

### **Develop a referral system to place apprentices and journey-level workers on jobsites**

By establishing a well-defined referral system, with proper monitoring and oversight, stakeholders can take on clear roles and can work together to attain targeted hire goals. As discussed in Chapter 3, union hiring halls are the system to refer apprentices and journey-level workers in PLAs. In cases where union hiring halls do not have workers who meet targeted hire eligibility to dispatch, PLAs allow contractors to recruit workers from alternative sources. In the case of LAUSD, We Build assists contractors to find targeted workers, and in the Los Angeles County MTA PLA, the Jobs Coordinator maintains a list of pre-screened targeted individuals ready to work.<sup>286</sup> In Cleveland, San Francisco, Oakland, and Milwaukee, union and non-union contractors alike use First Source Referral Systems to meet targeted hire goals (see Chapter 3).

In Cleveland, contractors needing assistance fill out a Job Order form, which is sent to Employment Connection. This is a collaborative workforce system of the City of Cleveland and Cuyahoga County that helps match employers' needs with workers.<sup>287</sup> In Oakland, the Local Construction Referral Program maintains a registry of eligible workers to assist contractors in meeting hiring goals.<sup>288</sup>

### **Improve jobsite conditions to increase worker retention**

The Portland community benefits agreement template includes several initiatives designed to improve jobsite working conditions, particularly for women and people of color. These include: cultural competency trainings, workshops with women and people of color workers to enlist them as recruiters, pre-construction reviews using the Wider Opportunities for Women Harassment-Free Workplace checklist, and assigning mentors to workers who may need additional support.<sup>289</sup> According to Connie Ashbrook, Executive Director of Oregon Tradeswomen, Inc., "for this round of community benefits agreements that we've negotiated locally, there's not only hiring goals for apprentices and journey-level people of color and women, but also jobsite environment goals. It requires jobsite supervisors to get cultural competency training, to monitor the bathrooms and make sure that there isn't any negative or racist graffiti and a variety of other quality of work life conditions that can really make it better for people of color and women on the job."<sup>290</sup>

## 9. CREATE, STAFF, AND FUND A ROBUST AND ACTIVE COMPLIANCE SYSTEM

A targeted hire initiative is only as strong as its compliance; it should include a system of clear workforce goals connected to robust compliance monitoring and outcome evaluation. It is imperative to fund compliance and enforcement, and to give the targeted hire initiative “teeth” so that there are accountability procedures in place when contractors fail to meet the outlined requirements. All of the tools reviewed include different active compliance mechanisms.

### **Establish an advisory body**

A targeted hire initiative should clearly define who is responsible for monitoring and enforcement. In many cases, a public agency establishes a public advisory board. They can monitor projects by reviewing certified payroll records, which are analyzed by public staff on a monthly or quarterly basis.<sup>291</sup> The board should have the authority to confront non-compliant contractors and/or hiring halls to explain poor outcomes.

The advisory board should also have the power to require remedial action to address problems, and the ability to recommend penalties.<sup>292</sup> It is important that monitoring starts early on in the project. Once a project is underway or almost completed, it becomes harder to remedy non-compliance and obtain positive targeted hire outcomes.

If contractors fail to meet targeted hire goals, the advisory board should work with contractors to remedy the situation, rather than immediately jump to penalties. Together, the contractor and the monitoring body can develop potential strategies to identify and overcome challenges and barriers. LAUSD has used this approach. Non-compliant contractors are required to meet with LAUSD Deputy Director of Contracts to discuss their local hire resident labor recovery plan in person. The LAUSD PLA also has a Labor Management Committee to oversee the enforcement of hiring requirements.

### **Include multiple stakeholders on advisory board or on a shared sub-committee to oversee compliance**

Public accountability is key in ensuring a targeted hire policy brings maximum benefits to targeted communities. This can be achieved by increasing community oversight, asking community representatives to participate in monitoring mechanisms, regularly updating progress reports, and making data readily available to the public. Although all of the PLAs reviewed in this report address community participation, particularly in the areas of outreach, recruitment, and education, only two explicitly include community oversight provisions: the Port of Oakland PLA and the Portland community benefits agreement template. We should note that the Seattle Seawall PLA also includes a Joint Administrative Committee (JAC) Subcommittee structure, “established as a forum for non-signatory stakeholders (such as community representatives, minority sub-

contractors, etc.).<sup>293</sup> The committee also includes one Seattle Department of Transportation Project representative, one Labor representative and representatives from stakeholder groups including community and WMBE associations.

The Port of Oakland PLA mandates the creation of a Social Justice Committee (SJC) to oversee the implementation and monitoring of the Port Social Justice Program, which contains the targeted hire provisions.<sup>294</sup> Through this committee, the PLA has a built-in enforcement mechanism exclusively dedicated to ensuring that the goals for economic and social justice development are met. The SJC reviews reports, refers complaints for violations, and makes program and funding recommendations in areas such as workforce development, childcare, mentoring and transportation.<sup>295</sup>

The Portland community benefits agreement template establishes a Labor-Management-Community Oversight Committee in charge of ensuring cooperation and collaboration between all parties, and preventing disputes and misunderstandings.<sup>296</sup> The committee is comprised of an equal number of city, labor, prime contractor and community organization representatives that have experience serving ethnic minorities, women and low-income people. The community benefits agreement template also stipulates the creation of a Compliance Monitoring Subcommittee responsible for monitoring contractors' and subcontractors' compliance with apprenticeship, workforce, and hire goals.<sup>297</sup> The Subcommittee includes at least one representative from the project owner, the Building Trades, Majority Contractors, Pre-Apprenticeship programs, M/W/DBEs, and community-based organizations.

## Lead compliance efforts

For best results, it is ideal that the municipality or the public agency takes responsibility for compliance as opposed to delegating it to contractors. Though public agencies may have different levels of involvement in overseeing compliance, the most successful programs are the ones where the agency is actively overseeing program outcomes. Some agencies hire a third party administrator to coordinate different stakeholders and oversee compliance with targeted hire requirements, but compliance nevertheless remains under the purview of the awarding agency.

For example, in the case of the LAUSD PLA, the labor compliance program is housed within the district. LAUSD hired a third party administrator charged with overseeing compliance and monitoring. This administrator actively engages with contractors and unions alike, providing assistance and support to ensure that targeted hire goals are met.<sup>298</sup>

In the case of the Los Angeles Department of Public Works PLA, compliance and monitoring falls under the purview of the Los Angeles Bureau of Contract Administration. The Bureau's Lifting Individuals Giving Hope Today (L.I.G.H.T.) Program works to direct and educate contractors and employers on targeted hire goals.<sup>299</sup> The program ensures the monitoring of contractor data, provides monthly reports that detail contractors' efforts in achieving goals, and facilitates and tracks apprentice hiring on all City administered construction projects.<sup>300</sup>

For ordinances, it is typically a department within the city that oversees monitoring. In Cleveland, the Office of Equal Opportunity is charged with monitoring and enforcement, although the law also calls for each contractor to designate a “Resident Employment Law Officer” charged with ensuring that the provisions of the ordinance are met.<sup>301</sup> In San Francisco, the Office of Economic and Workforce Development (OEWD) is responsible for the implementation and oversight of the ordinance. The department provides overall administrative guidance and is responsible for providing annual reports.

## **Penalize non-compliance and incentivize compliance**

Monitoring systems that include explicit sanctions for contractors that fail to reach targeted hire goals are also very effective in facilitating compliance. Non-compliant contractors can be re-classified as non-qualified bidders on future projects. The Portland community benefits agreement template states that non-compliance can also constitute a breach of the agreement and the owner may withhold progress payments until the breach is remedied.<sup>302</sup> Similarly, the Los Angeles County MTA PLA contains liquidated damages clauses.<sup>303</sup> In cases of non-compliance, prime contractors must pay liquidated damages equal to the average journeyman project wage for each hour the project fell short on targeted hire, or \$500 per day, whichever is greater.<sup>304</sup> To address the issue, prime contractors must develop a plan for compliance, and the agency only withholds liquidated damages until the prime is found to be in compliance. If the project is terminated or completed before the prime contractor is found to be in compliance, LACMTA’s CEO may assess liquidated damages to be withheld from the contractor’s retention.

The San Francisco ordinance also has penalties in the amount of a worker’s hourly prevailing wage for each hour the contractor falls short of the requirement.<sup>305</sup> In Cleveland, a penalty of 0.125 percent of total cost of construction contract is assessed for each percentage by which goals are not achieved.<sup>306</sup> In December 2012, the City of Cleveland’s Office of Equal Opportunity reported a total \$133,830 in collected penalties since 2009.<sup>307</sup>

In addition to clear and concrete penalties, some PLAs also include incentives for contractors to meet targeted hire goals and to encourage greater engagement with local and disadvantaged workers. For example, an agency can create a “preferred employer list” for employers who adopt practices that promote compliance. The Port of Oakland PLA rewards program administrators financially.<sup>308</sup> These incentives are not awarded based on performance outcomes, but on program-based activities such as engaging with contractors and subcontractors in designing strategies to meet local hire goals, documenting community outreach efforts, actively engaging with unions and community partners to strengthen workforce development of targeted populations, and mediating tensions between unions and contractors.<sup>309</sup>

The San Francisco Local Hire Ordinance authorizes “financial and non-financial incentives for contractors and subcontractors who exceed local hiring requirements, including financial incentives



that comply with applicable law and do not exceed one percent of the estimated cost of the contract and non-financial incentives by OEWD regulation.”<sup>310</sup>

## **Dedicate funding and resources for compliance**

Funding for compliance staff ensures that there is a dedicated team to carry out monitoring, evaluation, and compliance efforts, and that outreach, recruitment and training programs run successfully. The Portland Community Benefits Agreement template established a dedicated fund, financed through a one-time amount of 0.25 percent for each \$1 million in total project cost, to support the operations of the Compliance Monitoring Subcommittee.<sup>311</sup> The Port of Oakland PLA also requires contractors to make a contribution of 15 cents per craft hour to the Social Justice Trust Fund that supports the audit of contractor compliance.<sup>312</sup>

## **Adopt reporting technologies**

Municipalities should adopt reporting technologies to facilitate compliance and monitoring efforts. Investing in these technologies allows for the centralizing of information and the streamlining of targeted hire reporting. For instance, LAUSD’s We Build Program developed their own searchable database system to track and monitor data on all past and present workers.<sup>313</sup> The Port of Oakland adopted a Web Access Monitoring System (referred to as WAMS) to monitor contractor compliance with the Federal Davis Bacon Act and State prevailing wage laws.<sup>314</sup>

San Francisco upgraded its Payroll Reporting System (PRS) used by City contractors to report weekly payroll and worker residency information.<sup>315</sup> New features allow contractors working on projects covered by the Local Hiring Policy to submit compliance forms and to receive progress reports online. These improvements also allow OEWD to efficiently track worker demographics and provide more reliable data.<sup>316</sup> Cleveland adopted B2GNow Compliance Software to monitor compliance, verify payments, and tighten internal controls.<sup>317</sup> Similarly, the City of Seattle recently adopted LCPtracker and B2GNow systems.



## 7. TARGETED HIRE AND SEATTLE

Legal Context: I 200

Workforce Development in Seattle

Targeted Hire in Seattle: Lessons Learned from Sound Transit and the Port of Seattle PLAs

King, Pierce, and Snohomish counties will gain a projected 15,100 construction jobs between 2013 and 2019. This growth is positive and begins to fill the gap created by the jobs lost during the recession. The jobs provide opportunities to address growing income inequalities for socioeconomically disadvantaged populations, women and communities of color. The following section briefly outlines the legal context for implementing a targeted hire initiative in Seattle, provides an overview of existing workforce development programs that can be incorporated into the policy and reviews two PLA case studies.

## **Legal Context: I-200**

Efforts to improve employment outcomes for women and people of color can comply with state law established by Washington Initiative 200, "I-200."<sup>318</sup> I-200 prohibits preferential treatment based on race or gender in public contracting, but permits voluntary, aspirational workforce diversity goals. Public entities can demand "good faith efforts" to reach workforce diversity goals, and good faith efforts can be structured in a measurable and enforceable way. A popular approach adopts socio-economic criteria, like unemployment and poverty thresholds, or targets specific communities like single parents, transition-aged foster youth, and returning veterans. These approaches avoid challenges under I-200 as well as the U.S. Constitution, which prohibits discrimination on the basis of race, gender and residency in other states or municipalities.<sup>319</sup> As this report has documented, Los Angeles, Oakland, and San Francisco have avoided legal challenges using such targeted hire criteria.

## **Workforce Development in Seattle**

### **Registered Apprenticeships in King County**

The Washington State Apprenticeship and Training Council (WSATC) recognizes 30 Registered Apprenticeship programs in King County offering training in over 50 different occupations.<sup>320</sup> Unions sponsor 21 of these apprenticeship programs. Labor unions often develop and fund apprenticeship programs in partnership with contractors, who agree to invest in jointly administered apprenticeship programs that offer industry-wide skills training. The collective bargaining process develops the details of each joint labor-management apprenticeship program. Details may include the exact dollar amount (usually a few cents for every hour worked) that goes toward a fund for apprentice trainings and ongoing education for mid-career workers to refresh or update their skills, as building methods and materials change over time.

The other nine apprenticeship programs are sponsored by non-union institutions that include the Construction Industry Training Council and the Western Masonry Apprenticeship Committee. The Construction Industry Training Council of Washington (CITC) is a non-joint, multi-employer state registered apprenticeship and training program that offers seven state approved construction apprenticeship programs. CITC employers pay contributions to a training trust that enables apprentices to enroll in CITC without tuition fees and to receive support services and case management as

necessary.<sup>321</sup> CITC is one of the few open-shop apprenticeship programs in the region, and continuously works to educate contractors on the benefits of apprenticeship programs.<sup>322</sup> This model is particularly interesting for non-union contractors who may choose to not engage with joint labor-management or union apprenticeship programs.

### **City of Seattle Apprenticeship Goals**

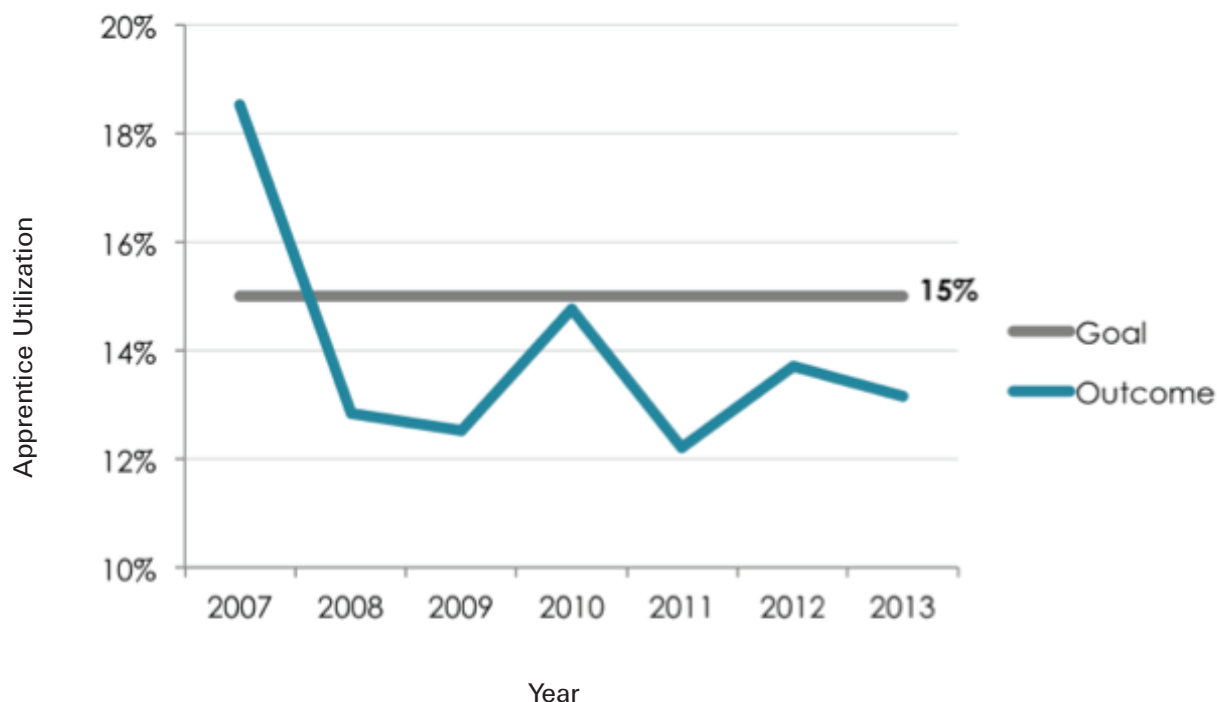
The City of Seattle requires apprentices enrolled in training programs approved or recognized by the Washington State Apprenticeship and Training Council to perform up to 15 percent of all project labor hours on public works contracts greater than \$1 million.<sup>323</sup> These contracts must contain a goal that minorities perform 21 percent of the apprentice labor hours and women perform 20 percent of the apprentice labor hours. These apprentice utilization requirements, along with quarterly workforce utilization reporting requirements, are incorporated into the general provisions of the construction contracts and are monitored by the Department of Finance and Administrative Services. Its director may change the specific requirements from time to time.<sup>324</sup>

During the pre-construction meeting, each contractor is required to submit an Apprentice Utilization Plan, outlining how it will meet the requirements. Contractors are also required to submit EEO/ Apprentice Utilization Forms quarterly and at the end of the project. The compliance team at the Department of Finance and Administrative Services reviews quarterly reports, conducts onsite interviews, and reviews certified payrolls. In cases of non-compliance, it works with contractors and directs them to available resources for hiring apprentices.

### **Apprenticeship Outcomes**

Seattle has had mixed success meeting its apprenticeship goals. Data from 2007 to 2013 indicate that apprentice utilization in City of Seattle Public Works projects hovered between 12 and 15 percent except for one year, 2007, when apprentices completed 18.5 percent of total workforce hours.<sup>325</sup> Apprentice hours completed by minorities dramatically exceeded the 21 percent goal. Female apprentices fared worse, falling continually short of the 20 percent goal.

**Figure 15: Apprentice Utilization in City of Seattle Public Works Projects\* 2007-2013**



*\*Not including federally-funded projects. Source: City of Seattle, Construction Workforce Diversity, EEO/ Apprentice Utilization Report Summary For All Projects, 2007 - 2013*

These figures reflect larger patterns in the industry and the area. In King County, fewer people of color and women complete construction apprenticeship programs, and more cancel out of their apprenticeship programs than their white counterparts.<sup>326</sup> Six of every ten apprentices of color (61%) cancelled their apprenticeship; just 35 percent completed their apprenticeship program.<sup>327</sup> Females completed the program less frequently than their male counterparts, and cancelled, transferred, or suspended their apprenticeship programs more than males.<sup>328</sup> The rate of apprentices achieving journey-level status was also lower among women than men.<sup>329</sup> Pre-apprenticeship preparation programs often improve apprenticeship success and workforce utilization rates.

### **Pre-Apprenticeship Opportunities in Seattle**

Two pre-apprenticeship programs in Seattle are formally recognized by the Washington State Apprenticeship and Training Council (WSATC): Apprenticeship and Nontraditional Employment for Women (ANEW), and the Pre-Apprenticeship Construction Training at Seattle Vocational Institute (SVI).<sup>330</sup>

Both ANEW and SVI offer an entryway for disadvantaged individuals to the trades. These organizations conduct outreach and recruitment directly in targeted communities and help entrants navigate the system. Both provide basic math, safety and skills training, as well as comprehensive support services to reduce barriers to success. Services include case management, mentorship, career counseling and interviewing skills, as well as referrals to assistance for food, housing, and childcare.<sup>331</sup> Both provide

students with financial assistance for work clothes and boots, hard hats, safety gear, tools to use while in the program, and union initiation fees and dues.<sup>332</sup>

ANEW is the oldest pre-apprenticeship for women in the nation, offering a free 14-week training program.<sup>333</sup> ANEW partners with many registered apprenticeship programs in the Seattle area, and these training partners explain their industry, teach technical and math-related lessons, and expose students to the inner workings of construction.<sup>334</sup> In 1994, ANEW and Port Jobs initiated the Apprenticeship Opportunities Project (AOP) as part of a community-wide effort to increase access to the trades careers for King County and Seattle residents who would not ordinarily have access to these opportunities, particularly women, people of color, and economically disadvantaged individuals.<sup>335</sup> In 2012, AOP enrolled 212 individuals and provided support services to 35 recipients, for a total of 247 individuals served.<sup>336</sup> Of the individuals served by AOP, 91 percent were low income, 33 percent were women, and 50 percent were minorities.<sup>337</sup> Since its creation in 1994, AOP has successfully placed nearly 2,000 individuals in apprenticeships and construction jobs.<sup>338</sup>

The Pre-Apprenticeship Construction Training program at SVI consists of two quarters of instruction.<sup>339</sup> Students can receive financial assistance to cover tuition expenses, such as grants and scholarships. About 99 percent of students do not pay for their training.<sup>340</sup> About 85 percent of participants complete the apprenticeship, and of those, 75 percent successfully enter apprenticeship programs. All students qualify as low-income; 15 percent are women, and 93 percent are people of color.<sup>341</sup> Fifty-five percent are formerly incarcerated.<sup>342</sup>

## **Targeted Hire in Seattle: Lessons Learned from Sound Transit and the Port of Seattle PLAs**

In this report we examine two hallmark master project labor agreements for projects owned by municipal agencies in Seattle to assess their success in increasing access to construction employment for women, minorities and other excluded groups. We review the goals and the outcomes of these agreements in Chapter 3. Here, we analyze three key components of these PLAs so that readers can draw from Seattle's own experience with targeted hire.

### **1) Community engagement**

In the Sound Transit PLA, community had strong participation. A coalition comprised of community and labor organizations representing residents, workers, and job seekers from Seattle's low-income communities called Fairness and Access to Sound Transit Jobs (FAST) were able to play a key role in the design of the PLA. Leading up to the negotiations, FAST organized community and testified before the Sound Transit board. Its demand was community participation in the bidding and contract negotiation with a focus on low-income communities, as well as fixed procedures for getting women and people of color into jobs and apprenticeships.<sup>343</sup> The Sound Transit PLA gave FAST a direct role in monitoring compliance and recruiting and retaining apprentices, women and people of color. By

contrast, the Port of Seattle PLA contained no clear role for community participation in monitoring or implementation other than pre-apprenticeship and apprenticeship program support.

## **2) Training and job placement**

The Sound Transit and Port of Seattle PLA allocate funding to pre-apprenticeship programs and support services for workers. Until 2010, the Port of Seattle's master PLA required contractors to contribute twenty cents (\$0.20) per hour worked to the AOP to be administered centrally by ANEW, but the Port has subsequently contributed the funds directly.<sup>344</sup> Sound Transit's master PLA created RAPID, the Regional Apprenticeship Preparation Integrated Delivery System, and required Sound Transit to contribute no less than five cents (\$.05) per hour worked to the RAPID fund.<sup>345</sup> Labor, FAST, and Sound Transit administer the funds to compensate service providers and community-based organizations involved in RAPID. Like AOP, RAPID provides case management, Individual Work Plans (IWP), career counseling, drug testing and rehabilitation, and other support services; unlike AOP, services are decentralized and administered by community-based organizations SVI, ANEW, and Helmets to Hardhats.

Sound Transit's RAPID adopted a three-tiered pre-apprentice and apprentice approach. Like Port of Seattle's AOP, tier one provides pre-apprenticeship training, case management, Individual Work Plan (IWP), career counseling, drug testing and rehabilitation, and other support services. Tier two places successful candidates in approved pre-apprenticeship programs and provides ongoing industry-specific training and education, work experience, and mentoring. The third tier includes a "Direct Entry" program to recruit minorities, women, and disadvantaged workers from certain zip codes in the Central Area, Rainier Valley, and Burien-White Center. Direct Entries are entered in a pool administered by Sound Transit; when a contractor needs an entry-level apprentice, Sound Transit forwards three randomly drawn names to the contractor. The selected candidate skips other apprentices in line and joins the workforce as soon as they receive their apprentice certification.<sup>346</sup> In 2011, nearly 94 percent of the 224 beneficiaries of Direct Entry were people of color, although only 12 were women.<sup>347</sup> Important to note is that community members raised concerns about job placement and retention on Sound Transit. FAST representatives reported that unions failed to dispatch them off the waiting list; that they experienced "turn-arounds" in which contractors returned them to hiring halls shortly after they were dispatched; and that Sound Transit failed to protect workers from discriminatory practices of contractors and union dispatches.<sup>348</sup>

## **3) Compliance monitoring and enforcement**

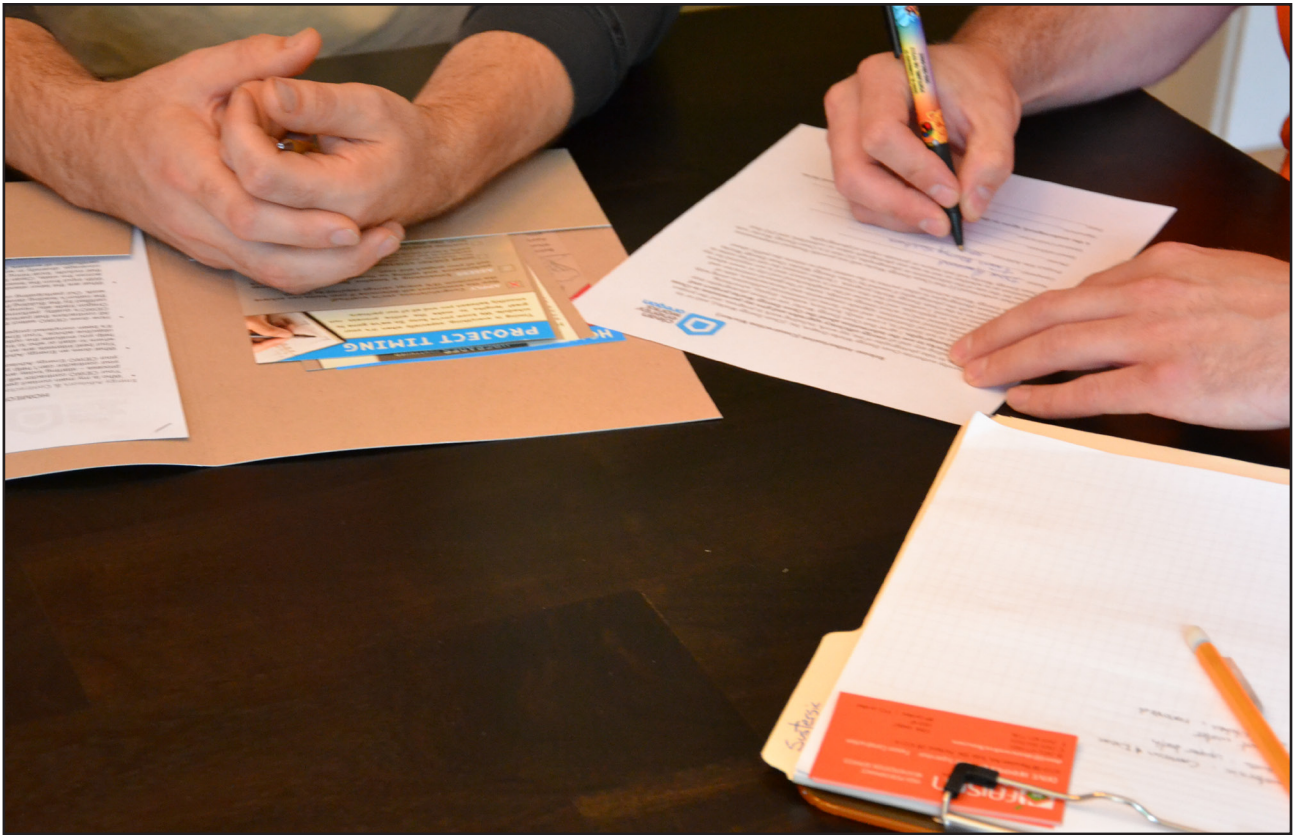
Both Sound Transit and Port of Seattle PLAs require contractors to submit monthly reports documenting apprentice hours to the Joint Administrative Committee (JAC). Sound Transit allows the JAC to recommend the agency withhold progress payments to the contractor if the contractor fails to meet the workforce and apprenticeship goals and shows a lack of good faith effort to do so; a mechanism used by the City of Seattle's Finance and Administrative Services to enforce contractor compliance with material aspects of social equity performance.

Both the Port of Seattle and Sound Transit PLAs substantially revised their monitoring and enforcement provisions. The Port of Seattle's new PLA unit, established in April of 2009, received praise from unions and pre-apprenticeship partners.<sup>349</sup> Three full-time Port staff began on-site monitoring, interviews and investigation, as well as regular meetings with contractors and unions to problem-solve shortcomings and compliance issues.<sup>350</sup> The unit gathers and reports data about apprentice utilization using an automated system called the Contractor Data System (CDS). The unit has made this information available in part to the public on the Port's website, and intends to make it fully available going forward.<sup>351</sup>

At Sound Transit, FAST representatives reported barriers to their monitoring, compliance and community participation.<sup>352</sup> Of the 25 FAST representatives and 10 agents trained during the initial stages of the PLA, only five were hired on a project.<sup>353</sup> Those five FAST representatives reported that the jobsites were simply too large to monitor alone, that there were no representatives on their off shifts, and that contractors were not receptive to them and did not use them as a resource for their minority workers.<sup>354</sup>

FAST representatives observed that, "Sound Transit policies reduce the effectiveness of monitoring, compliance, and community participation, as outlined in the PLA."<sup>355</sup> Furthermore, community groups report that without funding of any kind, community-led enforcement is unrealistic.<sup>356</sup> Unions report that FAST community groups lack a clear role and leadership, as well as a useful understanding of the union dispatch process.<sup>357</sup> Union leaders felt the FAST model perpetuated divisions between union membership and community, and failed to acknowledge that unions, too, comprise community.<sup>358</sup>





## 8. CONCLUSION: A TARGETED HIRE INITIATIVE FOR THE CITY OF SEATTLE

City of Seattle Best Practices

Incorporating Best Practices into New Projects

The City of Seattle, through the centralized function operated by the City Purchasing and Contracting Services, recently introduced several noteworthy best practices in its public works contracting, including funding and resources for enforcement and compliance monitoring, new on-line payroll reporting systems, and greater emphasis on clearly defining stakeholder roles. Taken together, these innovations position Seattle to implement any targeted hire program it chooses.

Seattle benefits from a diverse and concerted effort by a wide-ranging group of stakeholders to promote targeted hire tools that increase employment and economic opportunities for historically underserved communities. This section examines Seattle's current capacity to adopt a targeted hire policy, including recent best practices adopted by the City in its public works contracting.

## **City of Seattle Best Practices**

As this report has documented, public works projects by other public agencies in the King County region experienced difficulty monitoring and enforcing workforce diversity goals, owing in no small part to confusion regarding the roles of various stakeholders.

### **Automated, Real-Time Compliance Monitoring**

The Department of Finance and Administrative Services (City Purchasing and Contracting Services) recently purchased and implemented software to automate real-time workforce, prevailing wage and WMBE utilization data. Contractors and subcontractors are required to regularly update data into the system. To do so, they receive intensive training on how to use the software as well as 24-hour access to software support. This offers a vast improvement over the City's original manual paper reporting system, which made data analysis difficult.

### **Creation of the Construction Careers Advisory Committee**

In September 2013, Seattle City Council and Mayor established a 15-member ad hoc Construction Careers Advisory Committee to recommend strategies to improve access to construction jobs on public works projects for disadvantaged workers. The Committee is comprised of contractors, labor leaders, workforce training providers and members of the community. The Committee is expected to sunset March 31, 2014, unless renewed by a City Council resolution.

The Construction Careers Resolution that led to the creation of the Committee, recognized that community leaders and contractors, including general contractors and women and minority owned businesses, provide company strength and economic stability with economic investment to Seattle; union and labor leaders as well as training providers, support these policies and social needs while representing the employment practices that support all their members.

### **Gathering Key Research About the Industry and Workforce**

City Purchasing and Contracting Services commissioned several studies to assess workforce demographics, hiring practices and opportunities for creating a targeted hire initiative. As directed by

the Resolution, researchers are presenting the findings to the Construction Careers Advisory Committee. These research studies provide crucial information to understand the current climate and workforce conditions in the City of Seattle, and can inform any targeted hire initiative the City chooses to adopt.

### **Incorporating Best Practices into New Projects**

The Seawall CWA contains multiple innovative provisions designed to clarify roles and improve enforcement. While the Seawall CWA is relatively small (an estimated \$300 million in construction work), it is the first agreement the City itself has entered in a decade. The Seawall CWA contains several interesting provisions geared towards enhanced transparency, clarity of stakeholder roles, and strict enforcement.

- **Engaging Stakeholders:** The Seawall CWA allows an unlimited number of community representatives to attend the Joint Advisory Committee (JAC) meetings. This is a positive step in engaging stakeholders, though the agreement excludes direct community representation on the JAC or the establishment of an alternative community oversight model. To address this issue, the City Purchasing and Contracting Services Division recently developed a JAC Sub-Committee structure to provide a forum for non-signatory stakeholders such as community representatives to provide input to the JAC.
- **Job Placement:** Another interesting component is that contractors must consider the City's worker recruitment and referral service when unions cannot fulfill a contractor's workforce request. By doing so, the City is taking responsibility for ensuring that targeted workers are being placed on the project. The design and implementation of this provision is currently underway and is to be performed through a third party non-profit.
- **Contractor engagement:** To address the concern that PLAs exclude non-union contractors, the City and unions must provide training and assistance to open shop contractors about working under Collective Bargaining Agreements.
- **Veteran Recruitment:** The Seawall agreement also contains specific elements that support veterans. Unions and contractors must coordinate with Helmets to Hardhats to create and maintain an integrated database of veterans interested in working on the Seawall project, and increase apprenticeship and employment opportunities for veterans on the project. Unions are also asked to eliminate barriers to apprenticeship and journeying-out by giving credit to veterans for bona fide, provable past work experience.
- **Compliance:** The Seawall CWA requires that the City commit dedicated staff to enforce its provisions, given the absence of a third party enforcement body. The City provides monthly utilization reports to the JAC, and makes redacted copies of certified payroll and daily worker sign-in sheets available to the public by request. The agreement also establishes a subcommittee for stakeholders and community members to discuss issues, receive information on reports, ask questions and submit issues to the JAC for consideration. However, community advocates have indicated that the CWA falls short in allowing for community involvement in the monitoring and enforcement process.<sup>359</sup>

This past year has proven remarkable for the City of Seattle's public works contracting. The Construction Careers Committee commenced in September; automated real-time workforce utilization monitoring began in October; the Seawall project broke ground in November and key research presentations took place throughout the winter. Building off these initial opportunities, the City of Seattle can now lay the groundwork for a comprehensive targeted hire initiative that integrates best practices outlined in this report and lessons learned from the Sound Transit and Port of Seattle experiences.

## APPENDIX A: LIST OF INTERVIEWS CONDUCTED

### In Seattle, WA

1. Bob Armstead, President—National Association of Minority Contractors NAMC Washington Chapter
2. Diane Davies, Program Administrator—Seattle Vocational Institute—Pre-Apprenticeship Construction Training SVI—PACT
3. Jerry Dinndorf, Seattle District Manager—the Associated General Contractors AGC of Washington
4. Nicole Ferrer, Executive Director—Apprenticeships & Nontraditional Employment for Women ANEW
5. Ralph Graves, Managing Director—Capital Development, Port of Seattle
6. Andra Kranzler, Attorney—Columbia Legal Services
7. Frank Lemos, Founder and CEO - LDC, Inc.—The Civil Engineering Group
8. Todd Mitchell, Liaison—Helmets to Hardhats
9. Lee Newgent, Executive Secretary—Seattle Building & Construction Trades
10. Marge Newgent, Field Representative—International Union of Operating Engineers IUOE 302
11. Garry Owens, Member—FAST Jobs Coalition and of LELO
12. Martha Ramos, Organizer—FAST Jobs Coalition and LELO
13. Gus Sestrap, Operations Manager—Turner Construction Company
14. Halene Sigmund, President—Construction Industry Training Council CITC
15. Frederick Simmons, Member—IBEW Local 46, Coalition of Black Trade Unionists, and LELO Board
16. Michael Woo, Organizer—Got Green

### In Los Angeles, CA:

17. Anabel Barragan, Former Program Director—Los Angeles Unified School District We Build Program

18. Miguel Cabral, Director—Economic Development Initiatives & Workforce Compliance  
Los Angeles County Metropolitan Transportation Authority
19. Tim Gutierrez, President—Surety Mechanical Inc.
20. Lanita Morris, Project Coordinator—Black Worker Center, Los Angeles
21. Uyen Le, Compliance & Outreach Officer—International Brotherhood of Electrical  
Workers IBEW 11

### **In Cleveland, OH:**

22. Natoya Walker-Minor, Chief of Public Affairs & Director—Office of Equal Opportunity,  
City of Cleveland
23. David Wondolowski, Executive Secretary—Cleveland Building Trades

### **In Milwaukee, WI:**

24. Kathleen Mulligan-Hansel, Deputy Director—Partnership for Working Families
25. Barbara Triple, Contract Administration—Department of Public Works Administrative  
Services

### **In San Francisco, CA:**

26. Benita Benavides, Community Advocate—Chinese for Affirmative Action
27. Jenny Lam, Director of Programs—Chinese for Affirmative Action
28. Michael Theriault, Secretary-Treasurer—San Francisco Building Trades
29. Pat Mulligan, Director—City Build
30. Ken Nim, Workforce Compliance Manager—CityBuild

### **In Alameda County, CA:**

31. Andreas Cluver, Secretary-Treasurer—Alameda County Building Trades

### **In Oakland, CA:**

32. Ben Beach, Legal Director—Partnership for Working Families PWF
33. Jonothan Dumas, Local Employment Program Supervisor—City of Oakland
34. Jake Sloan, Port of Oakland Maritime and Aviation Project Labor Agreement Administrator—Davillier-Sloan, Inc.

### **In Portland, OR:**

35. Connie Ashbrook, Executive Director—Oregon Tradeswomen Inc.

### **In Washington D.C.:**

36. Art Lujan, Special Assistant to the President—National Building and Trades & Construction, AFL-CIO

## APPENDIX B: METHODOLOGY

We conducted an extensive literature review and examined written reports and policies associated with targeted hire. In researching targeted hire approaches, our team reviewed 14 case studies of programs operated by public agencies and municipalities across the country, and examined 20 additional examples of alternative targeted hire approaches. For the case studies, we reviewed the written project labor agreements and ordinances of each of the programs, as well as existing progress reports, city council minutes, and internal agency communications when available. We also collected extensive literature by academics and other industry stakeholders on targeted hire approaches.

We conducted 36 phone interviews with key stakeholders throughout the country, with a diverse range of perspectives on hiring practices in the construction industry. This included city officials, public agency staff, labor union leaders, contractors, community organizations, industry researchers and workforce development staff.

In assessing outcomes of apprenticeship programs in King County, we analyzed primary data provided by the Washington Department of Labor and Industries for active apprentices during the 2008-2013 period.

In addition, the UCLA Labor Center conducted a 21-question online survey among four women- and minority-owned business' representatives, on key information regarding their workforce composition, hiring practices, and public works participation.



## APPENDIX C: TARGETED HIRE PROGRAMS REVIEWED

### PLAs Reviewed

Findings in this report are based on case studies of seven project labor agreements implemented by different agencies across the country. These PLAs are summarized briefly below:

#### **Project-Specific**

The Board of Port Commissioners adopted The Port of Oakland Maritime and Aviation PLA (MAPLA) in 2000 to cover the Capital Improvement Program for the Port's Aviation and Maritime areas. Although it was initially adopted for five years, the PLA has been extended four times, and it is expected to run through June 2015. The agreement sets hiring goals that give priority preference to residents of Oakland and next preference to residents of their nearby cities, including San Leandro, Alameda and Emeryville.

#### **Multiple Projects**

The Los Angeles Unified School District (LAUSD), as part of its labor plan and strategy, signed a project labor agreement with the local building and construction unions in 2003. The PLA covers \$20 billion in projects, including repairs and modernization of existing schools, as well as construction of new ones.

#### **Public Agency-Wide**

The Hayward Unified School District Board approved a project labor agreement with the Alameda Building Trades Council for its \$205 million school construction and renovation bond. This PLA sets goals for local resident hiring, and gives priority to the District's former students and recent graduates.

The Los Angeles County Metropolitan Transportation Authority (LACMTA) approved a project labor agreement in January 2012. LACMTA negotiated with the Los Angeles/Orange County Building Trades Council to help increase the number of workers from disadvantaged areas who are hired on the agency's transit and road projects.

Following the passing of the Public Infrastructure Stabilization Ordinance in 2010, and under its Lifting Individuals Giving Hope Today (L.I.G.H.T.) Program, the City of Los Angeles adopted a departmental PLA to cover all Public Works construction by the Department of Public Works (DPW).<sup>i</sup> The Los Angeles DPW PLA covers approximately 98 Public Works construction projects with an estimated value of more than \$2 billion.<sup>360</sup>

#### **Seattle PLAs:**

In 1999, the Port of Seattle signed a master PLA with national and local building and construction trades, local affiliated unions, and the prime contractor for all contracts to complete an estimated \$2.6

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<sup>i</sup> In addition, the City of Los Angeles has other three departmental PLAs in place: 1) The Port of Los Angeles (POLA) PLA; 2) the Los Angeles World Airports (LAWA) PLA; and 3) the Los Angeles Community Redevelopment Agency (CRA/LA) PLA.

billion of necessary facility improvements at Seattle-Tacoma International Airport. In 2010, the Port of Seattle reevaluated how to best utilize their PLA to further airport modernization.

Sound Transit mandated PLAs on all Link light rail construction and Sounder commuter rail station contracts in July 1999. That December, Sound Transit entered a master PLA with national and local building and construction trades for all light rail and commuter rail station contracts. As of 2011, the Seattle Sound Transit PLA had covered 8 projects with a total of 5.7 million hours worked.

## Ordinances Reviewed

Findings on this report are based on case studies of six ordinances implemented by different municipalities across the country. These targeted hire ordinances are summarized briefly below:

- On December 25, 2010, San Francisco passed its landmark **Local Hiring Ordinance**, which went into effect on March 25, 2011. The ordinance is expected to cover about \$27 billion in public works and improvement contracts over the first 10 years of the law, generating tens of thousands of construction jobs.
- In March 2009, the City of Milwaukee passed **Milwaukee Opportunities for Restoring Employment**, known locally as the M.O.R.E. Ordinance. The M.O.R.E. Ordinance extends provisions of the City's existent targeted hire initiatives, namely the Resident Preference Program (RPP) and Emerging Business Enterprise Program (EBE), by establishing a set of requirements that developers must meet to be considered for development subsidies or assistance. Among these mandates is a prevailing wage requirement, as well as increased apprenticeship training and job opportunities for residents of Milwaukee's poorest neighborhoods.
- In 2006, the City of Richmond signed into law the **Local Employment Ordinance**. The ordinance applies to public works or service contracts with the City of \$100,000 or more, and it requires that Richmond residents receive preference for employment in these projects.
- The City of Cleveland passed the **Fannie M. Lewis Cleveland Resident Employment Law** in 2003, which established a public works jobs guarantee for local and low-income workers. It was challenged not long after its adoption, but the 2007 case of Cleveland vs. Ohio upheld the law against constitutional concerns, making it a model legislation for other municipalities across the country. The legislation applies to City contracts in excess of \$100,000. More recently, Cleveland also approved a Community Benefits Agreement in an effort to increase the scope and strength of its targeted hire initiatives and increase direct benefits to local residents and businesses.
- In 1996, the City of East Palo Alto, CA passed its **First Source Hiring Ordinance**, requiring all redevelopment projects that receive \$50,000 or more in subsidies to hire local residents in each trade, as well as participating in a first source referral system.

- Oakland adopted its local hire program in 1993, which established the **Local Employment (LEP)** and **Local Construction Employment Referral Programs (LCERP)**. Both programs were codified in an ordinance in 2001. LEP requires that all Oakland public works and subsidized construction projects of \$50,000 or more hire Oakland residents, while the LCERP provides hiring referral guidelines for union shop and open shop employers.

## Community Benefits Agreements Reviewed

- In 2012, the City of Portland adopted a citywide **Community Benefits Agreement** template, establishing equity goals to be implemented in city funded projects, and dedicating funds to support women and minority workers and businesses. The City is currently piloting the agreement on two Water Bureau projects totaling \$100 million.

## APPENDIX D: GLOSSARY

**Community Benefits Agreements:** are legally binding contracts signed by a developer and a coalition of community representatives that address a wide range of community needs. Community benefits agreements can also include additional signatories like unions and training providers.

**Community Workforce Agreement:** are a part of project labor agreements that include targeted hire provisions.

**Direct or preferred entry:** refers to an agreement in which graduates of a named pre-training program (or programs) who meet apprenticeship eligibility criteria have a direct route into an apprenticeship program. Typically, pre-training programs that are selected for a direct entry relationship serve low-income workers and workers of color, and they have a proven track record for producing highly qualified graduates who can succeed on the job. Aspiring construction workers who graduate from these programs skip the list and go right into apprenticeship after demonstrating they meet the entry qualifications.

**Disadvantaged Business Enterprise (DBE):** The Washington State Office of Minority and Women Business Enterprises (OMWBE) defines a DBE as a firm owned and controlled by 51 percent or more eligible people. Eligible people are defined as minority, women, or socially and economically disadvantaged business owners.

**Disadvantaged workers:** are a broad category used to refer to workers that have been underrepresented in the construction industry, and/or have faced systematic barriers to employment. These are some of the criteria used to identify disadvantaged workers:

- Zip code with income criteria such as:
  - Residing in a census tract with a rate of unemployment in excess of 150 percent of the city or county unemployment rate
  - Having a household income of less than 80 percent of the annual median income for the area
- Minority / Women
- Veterans
- Facing one or two of the following barriers to employment such as:
  - Homeless
  - A custodial single parent
  - Receiving public assistance
  - Lacking a GED or high school diploma

- Participating in a vocational English as a second language program
- Having a criminal record or other involvement with the criminal justice system
- Experiencing long term / chronic unemployment
- Youth emancipated from foster care

**First Source Referral:** is a system operated by a public agency or non-profit organization to identify and refer eligible workers to construction jobs. First source referral systems bank eligible worker information and skills on a database and when a contractor places a request for a job vacancy, the agency identifies what individuals match the contractors' needs. The agency then refers eligible workers to the job site.

**Ordinance:** is legislation requiring project owners and contractors to hire targeted workers for public works construction projects. Such ordinances create a set of standards that can apply to a municipality or public agency and it applies to all projects it covers.

**Pre-apprenticeships:** are workforce development programs that prepare people, particularly low-income individuals and non-traditional construction workers such as women and minorities, to enter the construction trades.

**Project Labor Agreements:** are contracts negotiated between the owner of a construction project and applicable labor unions that establish an agreement for a union workforce at least through the duration of the project. PLAs include rules for worksite conditions, project execution, and protocol to resolve labor disputes without resorting to strikes and lockouts.

**Targeted Hire:** is a commitment that will be enacted through some form of policy and/or program to increase employment opportunities for disadvantaged workers, who often have difficulty accessing the construction workforce pipeline. Targeted hire creates institutional mechanisms to create opportunities and pathways for these workers and it links with other policies to ensure the provision of quality jobs, prevailing wages, and benefits packages. A targeted hire policy also provides training opportunities so that new workers can enter the industry while learning the skills necessary to move up in the construction career ladder.

**Underutilized firm:** is defined as a firm that meets the following criteria: 1) WMBE firm in business for at least one year at the time of a bid as evidenced by a City of Seattle Business License and/or a State of Washington UBI; and 2) has not been paid by the Bidder in the most recent 12 months; except that 3) once the Bidder pays such a firm for City work, the WMBE retains underutilized status and may be on future Inclusion Plan Forms as a "Spread The Work" firm for that Bidder for as long as 36 months.

**Union hiring hall or dispatch hall:** is a union-operated placement center where jobs from various employers are allotted to registered applicants. Contractors call union halls to request specific numbers of workers, with specific skill levels/types, for a specific amount of time. Union hiring halls

are able to go through their existing lists in order to specifically target workers that meet the PLA hiring criteria and dispatch those workers to the jobsite. In the event that union hiring halls are unable to provide adequate referrals, usually within 48 hours, contractors and subcontractors can then hire from a different employment referral source.

**Women- and Minority-Owned Business Enterprise (WMBE):** The City of Seattle defines WMBE firms as at least 51 percent owned by women and/or minorities.

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## 8. Conclusion: A Targeted Hire Initiative for the City of Seattle

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