



## **Community Benefits Agreement (CBA) Frequently Asked Questions (FAQ)**

### **1. What is a CBA? How does it differ from a PLA?**

Similar to a PLA, the Community Benefits Agreement, or CBA, is a pre-hire collective bargaining agreement between SANDAG and the San Diego County Building and Construction Trades Council, which includes its signatory Unions. It includes a series of Contractor hiring requirements implemented to benefit the San Diego region by advancing both social equity and project efficiency.

However, SANDAG's Community Benefits Agreement is so much more than a PLA and includes several equity programs within it. The SANDAG CBA is inclusive of all state and federally approved apprenticeship programs; non-union employees are not required to join Unions while working on covered projects; Disadvantaged Business (Disadvantaged Business Enterprises, Small Businesses, and Disabled Veteran Business Enterprise) working on the project have additional flexibility regarding CBA requirements which include additional core workforce and fringe benefit exemptions; the CBA includes high-reaching goals for Disadvantaged Workers and Targeted Workers.

### **2. Do Project Labor Agreements Discriminate Against Non-Union Contractors?**

No. Any contractor willing to abide by the terms of the PLA can bid on, and win, the project, regardless of the contractor's union status. Non-union contractors have won, and continue to win, work on projects covered by PLAs.

### **3. What projects are covered under the CBA**

Any construction project with a prime contract awarded by SANDAG with a SANDAG estimated construction contract award value of \$5,000,000 or greater.

### **4. The CBA states that it is not applicable to professional services on on-call contracts whose Master Agreements were advertised in 2021. Is this applicable to the future task orders yet to be advertised over the course of the on-call contracts?**

The CBA is not applicable to the on-call Architecture and Engineering (A&E) and Construction Management (CM) Master Contracts that had their RFQs advertised in 2021, and any Professional Service Tasks Orders or jobs issued under those Master Contracts are therefore not covered.

### **5. For Job Order Contracts, is an individual Job Order always covered by the CBA if it is \$250K or above?**

No. For a Job Order Contract (JOC) to be covered, the Master JOC estimated value must be at least \$5M. If the Master JOC value estimated at \$5M or greater, then Job Orders that are \$250K or greater will be covered by the CBA. If an individual Job



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Order is above \$250K, but the Master Job Order Contract is below \$5M, the Job Order is not covered.

### **6. Are there penalties if the Prime Contractor does not meet the established CBA hiring goals?**

Yes, there will be penalties if the Contractor does not meet the established goals. Each month SANDAG will calculate the total craft hours worked by Disadvantaged and Targeted Workers. If the craft hours worked by either Disadvantaged or Targeted Workers are less than 30% or 10%, respectively, of the total craft hours worked, a minimum of 2% of the month's progress payment shall be withheld. The withholding will be released when the Contractor comes into compliance.

At the conclusion of the project SANDAG will perform a final evaluation. The Prime Contractor's failure to either (1) meet the Disadvantaged and Targeted Worker hiring percentages set forth above for the Project as a whole, or (2) demonstrate that Prime Contractor and all other Contractors satisfied the standards and procedures of the CBA, shall result in SANDAG's final assessment of liquidated damages and deductions from the final release of retention payment. If the Contractor is short of the goals, a final deduction will be made amounting to \$25 for every hour short of either goal.

If hiring percentages were not met, Good Faith Efforts will be considered (See next response below).

### **7. If a Contractor is not able to meet the goals of the Disadvantaged and Targeted Worker utilization because workers are not available through the unions or are not otherwise available, will progress payments still be withheld?**

If the Contractor has made Good Faith Efforts, as described in the WORC Program Hiring Requirements, money will not be withheld from progress payments.

Good Faith Efforts include but are not limited to: (i) assigning current craft employees who are Disadvantaged Workers and/or Targeted Workers to perform covered work; (ii) if necessary, requesting referral of Disadvantaged Workers and Targeted Workers from union hiring halls and apprenticeship programs; and (iii) if the goals are not satisfied after following such steps, considering qualifying workers available from other sources, in compliance with Section 4.7 of the CBA.

### **8. Can Disadvantaged Workers ever be obtained from the area surrounding the project rather than from low-income zip codes?**

Workers living in low-income Zip Codes (where the median household income is 80% or below the national median income) will always count toward the Disadvantaged Worker goal. For projects which are designated to have a Local Employment Project Radius, workers living in Zip Codes within that radius will also count toward the Disadvantaged Worker goal. If local project radii are utilized towards the Disadvantaged Worker goals, the zip codes will be determined on a project-by-



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project basis. Additionally, Veterans, despite where they live, will always count towards the goal.

### **9. What is a Disadvantaged Business?**

A "Disadvantaged Business" means a business that has been certified by the California Department of Transportation and or any other CALTRANS-approved California certifying agency as a **Disadvantaged Business Enterprise** pursuant to 49 C.F.R §26.5; or a business that has been certified by the California Office of Small Business and DVBE Services as a **Small Business**, a Small Business for the Purpose of Public Works, or a **Disabled Veteran Business Enterprise**.

### **10. Can Contractors hire their own Employees on Covered Projects?**

Yes, Non-union Contractors may hire Core Employees on the project. A Core Employee is a journeyman or Apprentice who has appeared on the Contractor's active payroll for 60 out of the last 120 working days. Contractors who do not qualify as Disadvantaged Businesses may hire Core Employees and dispatch Union Hall workers on a one-to-one basis for up to three Core Employees. Qualifying Disadvantaged Businesses may hire additional Core Employees, as based on the procedure outlined in Section 4.6 of the CBA.

### **11. Do non-union Contractors' Core Employees need to register with the Union?**

Non-union Contractors' Core Employees are required to register with the Union (I.E., an Electrical Core Employee would register with Local 569) because Contractors are required to pay Fringe Benefit contributions to the Union benefit funds on behalf of all Core Employees working on the project. To clarify, Core Employees are not required to join a Union.

### **12. Do non-union Core Employees have access to the benefit payments made to the Unions?**

If the Core Employee works the number of hours required by their craft, they will be eligible to collect benefits such as Health and Welfare. In almost all cases, the Core Employees will get back the Hourly Vacation Contribution.

### **13. Are Union's individual Master Agreements still in effect under this CBA?**

Local labor master agreements of the Unions will apply so far as they are not in disagreement with any section of the CBA. If included in both the CBA and the master agreement, the CBA shall prevail, if included in the master agreement and not in the CBA, the master agreement shall prevail.



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### **14. Are Skilled and Trained Workforce requirements applicable to the CBA-covered projects as well, or will those requirements be waived because SANDAG is using a CBA?**

Yes, Skilled and Trained Workforce requirements, as defined by CA Public Contract Code 2600-2603, are still applicable to CBA projects, but SANDAG does not require monthly reporting. Any compliance issues between the Contractor and Union regarding the Skilled and Trained Workforce should be resolved using the CBA's Grievance Procedures.

### **15. Does the CBA require the utilization of Apprentices?**

California State Law requires the utilization of Apprentices on all covered work projects. CA State Labor Code 1777.5 in its entirety applies to all projects covered by the CBA. No additional requirements are added to the CBA.

### **16. In the instance that a specialized trade is needed on a project and employees represented by the Union do not possess the required unique skills, can employees be hired outside of the Union Halls?**

Technical or specialized work requiring specialized training which Union employees do not possess will be excluded from the CBA. Notice should be given to the Council and Project Labor Administrator at least 10 working days before this work commences.

### **17. Does every Contractor, regardless of when they start on the project, have to attend a CBA Pre-Job Conference?**

Yes. There must be a Pre-Job Conference for every Contractor who works on a covered CBA project.

### **18. When do the Contractors have to submit Letters of Assent?**

The Prime Contractor must sign and submit the Letter of Assent as a condition of award prior to the execution of a Covered Contract. No Contractor shall commence work on Covered Projects without first providing a copy of the signed Letter of Assent to the Project Labor Coordinator.

### **19. Are all State and Federal Prevailing Wage laws in effect on projects covered by the CBA?**

Yes. All California DIR and US DOL (when applicable) Prevailing Wage laws are applicable to projects covered by the CBA. This includes but is not limited to Basic Hourly Wages, Fringe Benefit contributions, Shift Differentials, Recognized Holidays, Apprenticeship Requirements, overtime pay, etc.