

**Board Report**

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**File #:** 2022-0760, **File Type:** Policy**Agenda Number:** 36.

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**OPERATIONS, SAFETY AND CUSTOMER EXPERIENCE COMMITTEE  
NOVEMBER 17, 2022****SUBJECT: MANUFACTURING CAREERS POLICY****ACTION: APPROVE RECOMMENDATION****RECOMMENDATION**

ADOPT the Manufacturing Careers Policy (MCP), to administer the United States Employment Program (USEP) for federally funded Rolling Stock contracts and the Local Employment Program (LEP) for non-federally funded Rolling Stock Contracts (Attachment A).

**ISSUE**

This Board Action is required to combine Metro's USEP and LEP program into the new Manufacturing Careers Policy for rolling stock (refer to Attachment A) and to provide for necessary modifications based upon lessons learned. Recognizing the growth in Metro's transit operations, capital infrastructure program, and associated procurements for manufactured transit equipment, Metro's MCP objectives are: to increase quality job creation and career development for low-income residents facing barriers to employment, to maximize equitable outcomes and economic resiliency in disadvantaged communities, and to maximize career investments in new or existing manufacturing/assembly facilities in the United States and Los Angeles County.

**BACKGROUND**

Metro was the first agency in the United States to utilize the USEP and the LEP. Both programs stipulate a minimum of 10% disadvantaged workers on Rolling Stock procurements. In addition, the USEP requires the workers to be located within the United States, while the LEP requires the workers to be within the State of California. As a result of the USEP and LEP provisions being included in previous Contracts, over \$20 million of wages & benefits have been allocated to new jobs to date. In addition, implementing the USEP and LEP has led to over \$14 million in local facility investments by transit vehicle manufacturers.

Throughout its inception, the USEP and LEP programs have elevated job creation for a broad range of careers in Rolling Stock design, manufacturing, and maintenance. The USEP and LEP demonstrate Metro's commitment to creating good local jobs and training programs and generating unprecedented opportunities for historically underserved communities.

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The Federal Transit Administration (FTA) first authorized Metro to utilize the United States Employment Program (USEP) on federally funded Rolling Stock procurements for light and heavy rail vehicles and transit buses in 2011. Metro subsequently established the Local Employment Plan (LEP) for non-federally funded Rolling Stock contracts in 2017.

## **DISCUSSION**

Staff has created a Manufacturing Careers Policy (MCP) to combine and establish the internal guidelines for the US Employment Program (USEP) and Local Employment Program (LEP). The objective of the MCP is to maximize the economic co-benefits from investments in transit equipment, infrastructure, and related services. Staff recommends the adoption of the MCP as a mechanism for Metro to leverage investments in the manufacturing of Rolling Stock.

The combination of the USEP and LEP into the MCP will result in:

- Lowering the dollar threshold of the procurement size for USEP and LEP applicability (lowered from \$100 million to \$50 million), thereby potentially covering more contracts and providing the defined workforce benefits to a larger population pool;
- Requiring the implementation of the USEP or LEP as a contractual requirement on applicable contracts, as opposed to offering bonus evaluation points to proposers that commit to the USEP or LEP as an optional element;
- Adding remedies for contractual non-compliance with the USEP or LEP (as allowed by law and as approved by the Federal Transit Administration, to potentially include liquidated damages, withholding of progress payments, and performance bond applicability);
- Adding a retained workers category (workers employed by the proposer before the Metro contract award) to provide long-term career opportunities for new hires under the USEP and LEP (to facilitate the career movement of new hires on one contract to other contracts);
- Clearly defining terms of the MCP, among other updates.

Recognizing the growth in Metro's transit operations, capital infrastructure program, and associated procurements for manufactured transit equipment, Metro's MCP objectives are: to increase quality job creation and career development for low-income residents facing barriers to employment, to maximize equitable outcomes and economic resiliency in disadvantaged communities, and to maximize career investments in new or existing manufacturing/assembly facilities in the United States and Los Angeles County.

The Manufacturing Careers Policy will be applied to all Rolling Stock procurements and related contracts with a minimum contract value of \$50 million (reduced from the current threshold of \$100

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million) and at Metro's discretion to related pilot technology contracts. Furthermore, solicitation and contract provisions will be in-line with the MCP, including but not limited to: weighted USEP or LEP evaluation factors that represent 5% of the overall possible points in a Best Value RFP and contractual provisions allowing Metro to withhold milestone payments and/or apply other remedies allowed by law.

Adopting the MCP is in-line with the Metro Board's approval of a Project Labor Agreement and Construction Careers Policy for its construction contracting program. The MCP, combined with the PLA and the CCP, ensure that Metro creates opportunities for disadvantaged workers in sectors it is heavily investing in: construction contracting and rolling stock manufacturing.

### **DETERMINATION OF SAFETY IMPACT**

Approval of the Manufacturing Careers Policy will not impact the safety of Metro manufacturing workers and patrons. Metro Operations and Safety will carefully review any future developments resulting from the MCP policy.

### **FINANCIAL IMPACT**

No Financial Impact.

### **EQUITY PLATFORM**

Metro's USEP and LEP enhance equity for marginalized and vulnerable community members by creating employment opportunities in the manufacturing industry for individuals with historical barriers to employment, such as those experiencing homelessness, single custodial parents, receiving public assistance, lacking GED or high school diploma, criminal record or history with criminal justice system, chronically unemployed, emancipated from foster care and/or veterans. To date, USEP/LEP applicable Rolling Stock Contracts have generated over \$20 million dollars in wages & benefits to new hire workers, with over \$2 million dollars in wages and benefits paid to disadvantaged workers. The USEP and LEP mandate a minimum of 10% disadvantaged hiring requirements. In addition, the implementation of the USEP and LEP has led to over \$14 million in local facility investments by transportation vehicle manufacturers.

Approval of the MCP will lower the threshold for the Rolling Stock contract's applicability to the USEP and LEP from \$100 million to \$50 million. A lower threshold will potentially lead to a higher volume of Rolling Stock contracts that will be subject to the USEP and LEP and directly impact the level of increased opportunity for individuals who have faced historical barriers to employment and are considered disadvantaged.

### **IMPLEMENTATION OF STRATEGIC PLAN GOALS**

Metro's MCP supports strategic plan goal #3 to enhance communities and lives through mobility and access to opportunity. Metro's MCP provides employment opportunities for individuals from disadvantaged and socially barriered backgrounds and also enhances the economic stability within the United States through new job creation and local facility investments.

**NEXT STEPS**

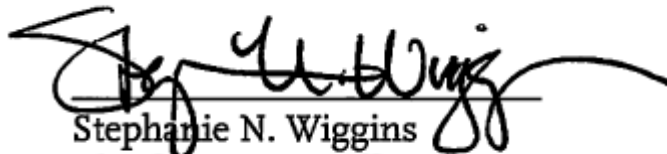
Staff will monitor contractor compliance with the requirements of the MCP and ensure that corresponding solicitation and contractor language match the Policy.

**ATTACHMENTS**

Attachment A - Manufacturing Careers Policy

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## **MANUFACTURING CAREERS POLICY**

(Combining Policy for US Employment Program and Local Employment Program)

### **POLICY STATEMENT**

This Manufacturing Careers Policy (MCP) describes the Los Angeles County Metropolitan Transportation Authority's jobs, equity, and training programs in its procurements for Rolling Stock.

The Los Angeles County Metropolitan Transportation Authority ("Metro") Board of Directors' policy objective is to maximize the economic co-benefits from investments in transit equipment, infrastructure, and related services. Metro can leverage its investments in transit projects to support the creation of new, high-quality jobs. Recognizing the growth in Metro's transit operations, capital infrastructure program, and associated procurement for manufactured transit equipment, Metro's objectives are to maximize:

- Quality job creation and career development for low-income residents and those facing barriers to employment.
- Equity outcomes and economic resiliency in disadvantaged communities; and
- Investments in new or existing manufacturing/assembly facilities in the United States and Los Angeles County.

Metro can achieve these critical objectives by incorporating a US Employment Plan (USEP) (for projects using federal funds) or Local Employment Plan (LEP) (for projects using local funds) into Metro's source selection process for awarding new contracts for Rolling Stock.

Under Metro's MCP, proposers' commitments to create and retain quality jobs, to invest in design, manufacturing, commissioning and maintenance facilities in the U.S. and Los Angeles County, to implement robust workforce training programs, and to promote career development for low-income residents and those facing barriers to employment will be factored into Request for Proposal ("RFP") scoring, including on Best Value RFPs, and will become contractual requirements for the selected vendor.

Metro will apply the USEP or LEP (depending on the funding source) to all Metro Rolling Stock Requests for Proposals ("RFPs") and contracts with an Independent Cost Estimate of at least \$50 million and above with the potential of an MCP waiver for pilot technology procurements to be approved at Metro's discretion by Metro's Chief of Strategic Financial Management.

### **PURPOSE**

To combine the USEP and LEP under the MCP, under which prospective Contractors propose minimum commitments on job quality, training, and employment opportunities on covered Metro Rolling Stock procurements.

## **APPLICATION**

This Policy applies to Metro Rolling Stock RFPs and Contracts with an Independent Cost Estimate of at least \$50 million and above with the potential of an MCP waiver for Pilot Technology Procurements to be approved at Metro's discretion by Metro's Chief of Strategic Financial Management.

### **1.0 GENERAL**

**1.1** The Diversity and Economic Opportunity (DEOD) and Rolling Stock Units of the Vendor Contract Management ("VCM") Department shall jointly administer this Policy, in coordination with all relevant and responsible departments as assigned under the MCP.

**1.2** The following sections describe Metro's procedures for application of the USEP or LEP Policy to competitively negotiated Rolling Stock procurements subject to the MCP. These procedures shall be interpreted and implemented in a manner that is consistent with Metro's Acquisition Procedures for Competitively Negotiated Contracts.

### **2.0 COVERAGE OF PROJECTS**

**2.1** Except as provided otherwise herein, this Policy applies to all Rolling Stock RFPs and Contracts with an Independent Cost Estimate of at least \$50 million and above with the potential of an MCP waiver for Pilot Technology Procurements to be approved at Metro's discretion by Metro's Chief of Strategic Financial Management. Such RFPs and Contracts are described in this Policy as "Covered Contracts." Any Rolling Stock RFP containing an MCP waiver for Pilot Technology Procurement shall state prominently that the RFP is exempt from the MCP pursuant to such waiver.

**2.2** This Policy's USEP requirements shall apply when a Covered Contract is funded in whole or in part from federal sources. The USEP may not include evaluation criteria that establish geographical preferences in the location of a contract awardee's operations or in the location of the jobs created, absent any new guidance from federal agencies permitting such geographical preferences.

**2.3** This Policy's LEP requirements shall apply when a Covered Contract is funded solely from non-federal sources. The RFP and source selection process for a Covered Contract subject to an LEP shall include geographical preferences for New Hires and Retained Workers.

#### **2.4 RFP Development**

**2.4.1** The Contracting Officer shall apply either the USEP or LEP on each Covered Contract, depending on funding source. Covered Contract

procurements shall be performed in accordance with Metro's Acquisition Procedures for Best Value Selection Process. The Contracting Officer shall develop evaluation factors and sub-factors that identify and promote Metro's Rolling Stock product preferences and the goals of this Policy by establishing the relative weight of evaluation factors, including the weight of the evaluation factors for USEP or LEP commitments. The relative evaluation factor weighting for USEP or LEP commitments shall be set in proportion to other technical and price factors, in coordination with the Project Manager, and as described in Section 2.4.2.

**2.4.2** The relative weighting of all RFP factors, including the USEP and LEP commitments shall be documented in the source selection plan created by the Contracting Officer. The weight of the USEP or LEP evaluation factor shall represent 5% of the overall possible points in a Best Value RFP.

**2.4.2.1** The USEP or LEP evaluation factor shall be among the totality of factors that equal 100% of the available scoring on the RFP and shall not be applied as voluntary bonus points.

**2.4.2.2** The Contracting Officer will score the Proposer's USEP or LEP, and assign points based on the USEP or LEP evaluation factor weighting, based on the Total Dollar Commitment in the USEP or LEP, the quality of the USEP or LEP commitments (including but not limited to the total number of FTEs, the Fringe Benefit Amounts for each classification, the Minimum Hourly Wage Rate for each classification, the commitment to hire Disadvantaged Workers, and the Workforce Training commitment), and responsiveness to the USEP or LEP requirement.

**2.4.3** Covered Contract RFP specifications will include the requirement of a USEP or LEP. Covered Contract RFPs shall require, in addition to other applicable RFP requirements, that Proposers include each of the following in a responsive Proposal (the "RFP Proposer Submittal Requirements"):

**2.4.3.1** For Covered Contracts requiring a USEP, the Proposer shall include, for itself and for any Subcontractor participating in the USEP: (1) the Total Dollar Commitment, (2) number of projected Full Time Equivalent ("FTE") New Hires and number of projected FTE Retained Workers in the United States claimed for purposes of the USEP, including the location and classifications of the New Hires and Retained Workers; (3) the number of Direct Hours proposed for each job classification that will be filled by New Hires and Retained Workers under the Covered Contract; (3) the job classifications to be utilized for USEP commitments under the Covered Contract; (4) the job location of each New Hire and Retained Worker to be utilized for USEP commitments; (5) the proposed Minimum Hourly Wage Rate to be paid for each job classification utilized for USEP commitments; (6) the proposed minimum Fringe Benefits Amount, if any, for each job classification utilized for USEP

commitments, including a description of each type or category of Benefit to be provided, a description of the methodology used to calculate the minimum Fringe Benefits Amount for each category of Benefits, eligibility criteria for each category of Benefit, any projected co-premium or other employee-paid cost for each category of Benefit, and projected utilization rates by New Hires and Retained Workers; (7) the minimum hourly Overtime Pay Rate to be paid for each job classification utilized for USEP commitments.

**2.4.3.2** For Covered Contracts requiring an LEP, in addition to the categories of information required under Section 2.4.3.1, the Proposer shall include, for itself and for any Subcontractor participating in the LEP, the location in Los Angeles County of each proposed FTE New Hire and Retained Worker.

**2.4.3.3** For all Covered Contracts, the Proposer shall provide the race and gender of Proposer's existing employees (if any exist) as self-identified by the employees in job classifications that will be utilized under the Covered Contract for meeting USEP or LEP commitments. Such information shall not include the names or identifying information of individual employees.

**2.4.3.4** For all Covered Contracts, the Proposer and each Subcontractor participating in the USEP or LEP will commit to hire Disadvantaged Workers for a minimum of 10% of the total FTE New Hires and Retained Workers to which the Proposer commits under the USEP or LEP.

**2.4.3.5** For all Covered Contracts, the Proposer and each Subcontractor participating in the USEP or LEP shall provide a certification, executed by a corporate officer of the Proposer or Subcontractor under penalty of perjury, affirming that the Proposer or Subcontractor has a Cost Accounting System capable of segregating Direct Hours performed on the Covered Contract from non-Covered Contract hours.

**2.4.3.6** For all Covered Contracts, the Proposer shall identify each Subcontractor participating in the USEP or LEP and describe any plan to encourage additional Subcontractors to participate in the USEP or LEP. The RFP shall make clear that Proposers may receive credit toward an USEP or LEP commitment for Subcontractor New Hires and Retained Workers located in the United States (for purposes of a USEP) or Los Angeles County (for purposes of an LEP).

**2.4.3.7** For all Covered Contracts, Proposers shall provide a narrative description of the opportunities in skilled and unskilled positions for New Hires and Retained Workers under the Covered Contract, the minimum qualifications necessary for each classification of New Hire and Retained



Worker under the Covered Contract, and a description of whether the USEP or LEP is likely to produce long-term employment in skilled or trade labor for Disadvantaged Workers. Proposers shall include a description of promotion opportunities for New Hires and Retained Workers in entry level and/or semiskilled positions and a description of expected or proposed career ladders for New Hires and Retained Workers.

**2.4.3.8** For all Covered Contracts, Proposers shall provide the Total Dollar Commitment for the Covered Contract, the minimum Hourly Wage Rate for each classification, and the minimum Fringe Benefit Amounts for each classification. The RFP shall make clear that payment of at least the minimum Hourly Wage Rate and the minimum Fringe Benefit Amount shall be independent obligations of the Proposer under the Covered Contract.

**2.4.3.9** For all Covered Contracts, Proposers and participating Subcontractors shall provide a description of the Workforce Training that will take place under the Covered Contract, including the minimum dollar commitment to be made for Workforce Training in the United States (in the case of a USEP) and in Los Angeles County (in the case of an LEP), including the ways in which Workforce Training provided under the Covered Contract will create transferable, industry-recognized credentials and skills and any proposal to take advantage of publicly or privately funded workforce development programs or registered apprenticeship programs

**2.4.3.10** For all Covered Contracts, Proposers and participating Subcontractors shall describe with specificity their proposed outreach, recruitment and retention plan for New Hires and Retained Workers, including proposed strategies for recruiting, training, hiring, and retention of Disadvantaged Workers, any proposed coordination or partnerships with workforce development organizations, community-based organizations, labor organizations, worker centers, faith-based organizations, or other service providers, and any proposed support to ensure the retention of Disadvantaged Workers such as case management services, childcare support, transportation assistance, food insecurity support, access to dental or medical care, or access to mental health resources.

**2.4.3.11** For all Covered Contracts, Proposers will provide a USEP (or LEP) project schedule that describes the phasing of Direct Hours by New Hires and Retained Workers. This phasing schedule must coincide with the overall project schedule.

**2.4.3.12** For all Covered Contracts, Proposers and participating Subcontractors shall acknowledge that they will be required to submit to Metro and maintain Certified Payroll Records, in a manner requested by Metro, certifying under penalty of perjury the Direct Hours, Wages, and

Benefits paid to New Hires and Retained Workers under the Covered Contract.

**2.4.3.13** For all Covered Contracts, Proposers and participating Subcontractors shall describe their proposed means of documenting compliance with the USEP or LEP, including the name, contact information, and credentials of the designated official responsible for overall compliance with the USEP or LEP (the “Plan Administrator”), the name, contact information, and credentials of each participating Subcontractor’s primary official responsible for compliance with the USEP or LEP, and a description of the proposed mechanisms for maintaining and submitting accurate information to Metro and for documenting timely compliance with USEP or LEP commitments.

**2.4.4** The RFP shall make clear that only Direct Hours of New Hires and Retained Workers, segregated under a Cost Accounting System, may be counted toward USEP or LEP commitments.

**2.4.5** Proposers shall provide responses to each of the RFP requirements set forth in Section 2.4.3 using common forms designated by the Contracting Officer, which shall include a Labor Value Form containing the proposals required in Sections 2.4.3.1 or 2.4.3.2, 2.4.3.8, and 2.4.3.11, and a Narrative Form describing USEP or LEP commitments for the other requirements.

**2.4.6** The Contracting Officer shall perform a Proposer Responsiveness and Responsibility determination of all Proposers in accordance with Metro’s Acquisition Procedures for a Best Value Selection Process. The Contracting Officer will use the RFP Proposer Submittal Requirements contained in subsections 2.4.3.1 to 2.4.3.13 to establish a checklist of proposal elements that will aid in determining a Proposer’s Responsiveness to the USEP or LEP requirements.

**2.4.7** The Contracting Officer’s Responsiveness determination will ensure that the Proposer has fully responded to each of the RFP Proposal Submittal Requirements.

## **2.5 Contract Provisions**

**2.5.1** The Contracting Officer shall develop all terms and conditions for Covered Contracts in accordance with Acquisition Procedures for Negotiated Procurements. In addition to General and Special Conditions developed specifically for Rolling Stock projects, the Contracting Officer shall develop and include Special Conditions in the final executed Covered Contract reflecting the Contractor’s and any Subcontractors’ USEP or LEP commitments, including each of the Special Conditions set forth in this Section 2.5:

**2.5.2** A contractual provision requiring achievement of each commitment set forth

in the USEP or LEP, including but not limited to the Total Dollar Commitment, the payment of minimum Hourly Wage Rates and Fringe Benefit Amounts, the commitment on Workforce Training, and the commitment on hiring Disadvantaged Workers.

**2.5.3** A contractual provision defining Direct Hours, New Hires, Retained Workers, Hourly Wage Rate, Fringe Benefit Rate, Benefits, Total Dollar Commitment, Workforce Training, Disadvantaged Workers, and all other relevant terms in a manner consistent with this Policy.

**2.5.4** A contractual provision committing the Contractor and each Subcontractor to maintain a Cost Accounting System capable of segregating Direct Hours on an individual basis for each New Hire and Retained Worker.

**2.5.5** A contractual provision requiring the Contractor and each participating Subcontractor to maintain and submit Certified Payroll Records in a manner consistent with Section 2.6 of this Policy.

**2.5.6** A contractual provision requiring the Contractor and each participating Subcontractor to submit compliance reports (the “Quarterly Reports”) on a quarterly basis containing the total Direct Hours, the actual hourly wage rate, the Fringe Benefit Amounts, and the total wages (including overtime wages) for each New Hire and Retained Worker during the reporting period, and describing expenditures on Workforce Training and hiring of Disadvantaged Workers during the reporting period.

**2.5.7** A contractual provision prohibiting a Contractor or participating Subcontractor from retaliating against an employee who uses the complaint procedure established under Section 2.6.2.

**2.5.8** A contractual provision permitting Metro to exercise all of the rights and remedies under Contract for USEP/LEP non-compliance, including but not limited to the withholding of Milestone Payments and other periodic payments in the event of a Material Violation of the USEP or LEP and the retention of such withheld Milestone Payments or other periodic payments unless and until the Material Violation is corrected, as described in Section 2.6.

## **2.6 Compliance, Reporting, and Enforcement**

**2.6.1** Prior to start of work on the Covered Contract, the Contractor shall provide to the responsible person at DEOD the name, contact information, and credentials of a Jobs Coordinator responsible for coordinating compliance with Disadvantaged Worker outreach, recruitment, and retention. The Jobs Coordinator may be the same person as the Plan Administrator. The Jobs Coordinator shall be responsible for the following: (1) developing and marketing specific programs to attract Disadvantaged Workers for Final Assembly and Manufacturing opportunities on the Project; (2) coordinating services for the Contractor and participating Subcontractors to use in the recruitment of Disadvantaged Workers; (3) conducting

orientations, job fairs and community outreach meetings in the local community; (4) screening and certifying the status of individuals as Disadvantaged Workers, while protecting such individuals' privacy; (5) establishing a referral and retention tracking mechanism for placed Disadvantaged Workers; (6) networking with the various workforce development organizations, community-based organizations, labor organizations, worker centers, faith-based organizations, and/or other service providers that provide qualified Disadvantaged Workers; (7) serving as the point of contact to provide information to Disadvantaged Workers about available job opportunities under the Covered Contract; and (8) assisting the Contractor and participating Subcontractors in documenting attainment of Disadvantaged Worker hiring commitments.

**2.6.2** DEOD will create and implement an employee complaint program, allowing Contractor and Subcontractor employees to file confidential complaints with DEOD about alleged non-compliance with the MCP, or with a commitment under a USEP or LEP. DEOD shall investigate each such complaint. Such employee complaint program shall include a telephone and e-hotline that employees may utilize.

**2.6.3** DEOD shall create and implement an education program designed to inform Contractor and Subcontractor employees about the MCP and the USEP or LEP provisions of the Covered Contract, as well as the complaint procedures implemented under Section 2.6.2, as described in full in the MCP Procedures document.

**2.6.4** DEOD shall conduct periodic random inspections of Contractor and participating Subcontractor facilities to assess compliance with USEP and LEP commitments.

**2.6.5** If requested by DEOD or the Contract Administrator, Metro's Management Audit Services Department ("MASD") shall perform an Agreed Upon Procedures ("AUP") review of Contractor and participating Subcontractor USEP or LEP compliance. Such AUPs shall occur: (a) on a regular basis, including upon the Contractor reporting the achievement of 50% of the Total Dollar Commitment and upon the Contractor reporting the achievement of the Total Dollar Commitment; and (b) as needed to assess compliance with USEP or LEP commitments including, but not limited to, payment of minimum Hourly Wage Rates and minimum Fringe Benefit Amounts, progress toward the Total Dollar Commitment, and attainment of Disadvantaged Worker hiring commitments. Such MASD AUPs shall not substitute for the other compliance procedures described in this Policy.

**2.6.6** In the event that DEOD or the Contracting Officer determines that a Contractor or participating Subcontractor has not complied with a USEP or LEP commitment, Metro will notify the Contractor in writing and provide the Contractor with 30 days to provide evidence that it or the participating Subcontractor has corrected such non-compliance. If such non-compliance constitutes a Material Violation and is not corrected to Metro's satisfaction within such a 30-day period (or longer as Metro may in its discretion allow), Metro may

exercise all remedies available under the Covered Contract, including withholding of Milestone Payments or other progress payments, as set forth in Section 2.6.7.

**2.6.7** Metro shall have the contractual right to retain Milestone Payments or other regular payments if it determines a Contractor or participating Subcontractor has committed a Material Violation of the USEP or LEP. In event that a Material Violation is not corrected within the 30-day period described Section 2.6.6 is not corrected, Metro shall withhold an amount from the next Milestone Payment or other regular payment in an amount commensurate with the Material Violation. If the Contractor or participating Subcontractor fails to provide evidence to Metro's satisfaction that it has cured the Material Violation within 60 days following the Contractor's or participating Subcontractor's notification of the Material Violation, Metro may elect to permanently retain the withheld funds. All permanently retained monies representing underpayment of minimum Hourly Wage Rates or minimum Fringe Benefits Amounts shall be remitted to the employees so underpaid.

**2.6.8** Metro shall include a contractual provision in each Covered Contract giving it the right to exercise all of its rights and remedies under the Contract in the event of a Material Violation. Metro's rights and remedies shall include, but not be limited to the following:

**2.6.8.1** In the event of a Material Violation involving the failure to meet the Total Dollar Commitment in the USEP or LEP, Metro shall withhold an amount equal to the difference between the Total Dollar Commitment and the documented total wages and benefits for Direct Hours multiplied by the documented number of Direct Hours.

**2.6.8.2** In the event of a Material Violation involving the failure to pay minimum Hourly Wage Rates or minimum Fringe Benefit Amounts, wage restitution shall be in the amount of such underpayments and shall be remitted to the Contractor's or participating Subcontractor's employees so underpaid.

**2.6.8.3** Metro reserves the right, subject to further direction by the Department of Transportation, to assess liquidated damages due to a Material Violation of the Contract.

## **2.7 Certified Payroll Reports**

**2.7.1** Each Contractor and each participating Subcontractor shall submit to DEOD, and maintain for the duration of the Covered Contract and for a period of three years following the conclusion of the Covered Contract, Certified Payroll Reports for each bi-weekly pay period. Such Certified Payroll Reports shall comply with the following requirements, and such other requirements as Metro may include in the Covered Contract.

**2.7.2** Each Certified Payroll Report shall list the name, address, and social security

number of each New Hire and each Retained Worker who performed Direct Hours on the Covered Contract during the bi-weekly pay period.

**2.7.3** Each Certified Payroll Report shall list the Direct Hours, actual wage rate, total Fringe Benefit Amounts paid by type of Benefit, and total wages for the pay period for each New Hire and each Retained Worker who performed Direct Hours on the Covered Contract during the bi-weekly pay period. In the event that the New Hire or Retained Worker performed both Direct Hours and non-Covered-Contract work during the pay period, the Certified Payroll Report shall list both the Direct Hours and the non-Covered-Contract hours, as well as the total wages attributable to Direct Hours and the total wages for all hours.

**2.7.4.** Certified Payroll Records shall be in a form, and subject to submission procedures, required by Metro.

### **3.0 DEFINITION OF TERMS**

**3.1 BENEFITS** means health insurance or care, dental insurance or care, additional employee insurance such as disability or life insurance, pension and retirement contributions, and supplemental pay such as vacation and sick leave for employees performing work on the Covered Contract. Government required payments such as workers compensation, unemployment insurance, FICA, Medicare taxes and Social Security may not be counted as Benefits for purposes of the USEP or LEP.

**3.2 CHRONICALLY UNEMPLOYED INDIVIDUAL** means a person suffering from chronic unemployment who has not had a job for at least 27 consecutive weeks and is currently available for work.

**3.3 CONTRACTOR** means a party to an executed Covered Contract with Metro.

**3.4 COST ACCOUNTING SYSTEM** means an internal accounting system that allows Proposers and Contractors to segregate and account for Direct Hours on an individual-worker basis for each .

**3.5 DIRECT HOURS** means hours of work performed by a New Hire or Retained Worker on a Covered Contract that are segregable under a Cost Accounting System.

**3.6 DISADVANTAGED WORKER** means an individual who, at the time of hiring, satisfies at least one of the following eight categories: 1) homeless; 2) single custodial parent; 3) receiving public assistance; 4) lacking a GED or high school diploma; 5) criminal record or history with the criminal justice system; 6) chronically unemployed; 7) emancipated from foster care; or 8) veteran.

**3.7 FRINGE BENEFITS AMOUNTS** means the amounts paid by a Contractor or

participating Subcontractor for Benefits on the Covered Contract for a defined period of time (for example, an hourly rate, a monthly rate, or an annual rate). Contractors or participating Subcontractors that provide self-insured medical or dental benefits shall use the annual amounts calculated by the health care plan broker (or any derivative company) for different benefit levels ('Representative Premiums') for purposes of calculating employee co-premiums. The Contractor or participating Subcontractor should then determine the plan type and level selected by each employee subject to the USEP/LEP. Each employee's Representative Premium should deduct any co-premiums actually paid by the employee from that amount ('Adjusted Representative Premium'). If the employee declined medical or dental benefits, the Contractor shall only count the amount it paid in the form of a declination payment. The resulting Adjusted Representative Premium amounts for employees shall be included in any compliance report to LA Metro. In estimating Fringe Benefit Amounts for a USEP/LEP labor value form and in reporting on Fringe Benefit Amounts paid by a Contractor in a Quarterly Report, a Contractor must deduct any amounts paid in co-premiums by employees from the amounts included. The Fringe Benefit Amounts shall be capable of being represented as an hourly rate using a methodology agreed upon by the Contractor and Metro.

**3.8 FTE** means full-time equivalent employee, which is the mathematical equivalent of one full-time employee based on 2080 hours worked per year. Two part time employees with a minimum of 20 hours per week may be recognized as one FTE.

**3.9 HIRE** means a natural person employed by a Contractor or participating Subcontractor to perform work on a Covered Contract who resides in the United States. The term "Hire" does not include: (a) a current employee who does not work on the Covered Contract; (b) a former, furloughed, and/or laid off employees who is separated from employment with a Contractor or Subcontractor on or after the date of Metro's Notice of Intent to Award unless they are rehired to work on the Covered Contract; (c) employees hired by a Contractor or Subcontractor to work on other projects to fill in or replace current employees reassigned to the Covered Contract; (d) an individual whose hours and costs cannot be segregated and audited pursuant to internal Cost Accounting Systems of the Contractor or Subcontractor; (e) work conducted outside of the United States. A Hire must: (i) be a direct, permanent employee; (ii) be paid directly by the Contractor or Subcontractor; (iii) have activities, schedule, and manner of work controlled by the Contractor or Subcontractor; (iv) receive pay and Benefits in the same manner as permanent employees; and (v) be supervised by a manager directly employed by the Contractor or Subcontractor.

**3.10 HISTORY WITH THE CRIMINAL JUSTICE SYSTEM** means direct involvement through having an arrest record, convictions, sentences, dismissals, or not guilty verdicts.

**3.11 HOMELESS INDIVIDUAL**

(A) means an individual who lacks a fixed, regular, and adequate

nighttime residence; and  
(B) includes—

- (i) an individual who—(I) is sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason; (II) is living in a motel, hotel, temporary RV or trailer park, or campground due to the lack of alternative adequate accommodations; (III) is living in an emergency or transitional shelter; or (IV) is abandoned in a hospital.
- (ii) an individual who has a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings.

**3.12 HOURLY WAGE RATE** means the minimum Hourly Wage Rate to each New Hire and/or Retained Worker for the relevant job classification.

**3.13 INDEPENDENT COST ESTIMATE** is a tool to assist in determining the reasonableness or unreasonableness of a Proposal being evaluated and is required for all procurements receiving federal funding regardless of dollar amount. FTA Circular 4220.1F, Ch. VI, Para. 6, advises grantees to “perform a cost or price analysis in connection with every procurement action, including contract modifications . . . The starting point for these cost/price analyses is an independent cost estimate which is made before receiving bids or proposals.” The Best Practices Procurement Manual (BPPM), Section 5.2 - Cost and Price Analysis, suggests that the independent estimate can range from a simple budgetary estimate to a complex estimate based on inspection of the product itself and review of items like drawings, specifications and prior procurement data.

**3.14 LOCAL EMPLOYMENT PLAN (LEP)** means the program to include local/geographic based labor hiring preferences and economic-based labor hiring preferences on locally funded Rolling Stock procurements. The LEP must also contain the information and supporting documentation requested in the RFP.

**3.15 MANUFACTURING OR MANUFACTURE** means all activities relating to the engineering, design, and production of the component parts of the vehicles produced under the Covered Contract in the United States except for the Final Assembly of such vehicles.

**3.16 MATERIAL VIOLATION** means a material failure to comply with or satisfy a USEP or LEP commitment, including but not limited to the failure to submit any required report or requested documentation related to USEP or LEP compliance within 30 days after the due date specified in the Contract or as requested in writing by Metro; the underpayment of the minimum Hourly Wage Rate or minimum Fringe Benefit Amount; and the submission of substantially false or misleading information in required reports or requested documentation related to USEP or LEP compliance.



Minor irregularities, informalities or apparent clerical mistakes in any report or minor deficiencies in the compliance with USEP or LEP commitments shall not be considered a Material Violation.

- 3.17 MILESTONE PAYMENT** means a mandated payment by Metro to the Contractor at a certain stage of performance of the Contract.
- 3.18 NEW HIRE** means a Hire whose first day of employment will be on or after the date the Covered Contract begins.
- 3.19 NEW DISADVANTAGED WORKER** means a New Hires who qualifies as a Disadvantaged Worker.
- 3.20 PILOT TECHNOLOGY PROCUREMENT** means a small-scale preliminary procurement, with an Independent Cost Estimate of not more than \$60 million, conducted to evaluate new technology, feasibility, duration, cost, adverse events, and to improve upon vehicle or equipment design prior to performance of full-scale implementation.
- 3.21 PROJECT** means performance of the Contract, including the engineering, design, production, delivery, assembly, acceptance, testing, maintenance, and warranty coverage requirements for the Contract Base Order and Option quantities.
- 3.22 PROPOSAL** means a submission to Metro in response to an RFP, required in order to be eligible for award of a Contract. A Proposal includes a price Proposal, a Technical Proposal, and other elements.
- 3.23 PROPOSER** means an entity that submits a Proposal and that would serve as the Contractor if awarded the Contract.
- 3.24 RETAINED WORKER** means a natural person who was an employee of the Contractor or Subcontractor prior to the commencement of work on the Covered Contractor and whom the Contractor or Subcontractor retains to perform work on the Covered Contract. A Retained Worker must: (a) be a direct, permanent hire; (b) be paid directly by the Contractor or Subcontractor; (c) have activities, schedule, and manner of work controlled by the Contractor or Subcontractor; (d) receive pay and Benefits in the same manner as other permanent employees; and (e) be supervised by a manager directly employed by the Contractor or Subcontractor (f) be on active payroll for 60 of the previous 100 days.
- 3.25 ROLLING STOCK** means transportation equipment utilizing railways or paved roads, including automotive vehicles, buses, vans, cars, railcars, railroad cars, locomotives, trolley cars and buses, and ferry boats, as well as vehicles used for support services.

- 3.26 SINGLE CUSTODIAL PARENT** means an individual who: (a) is unmarried, widowed, legally separated from a spouse and not remarried or married, spouse absent; and (b)(i) has a minor child or children under age 18 for which the parent has either custody or joint custody; or (ii) is pregnant.
- 3.27 SUBCONTRACTOR** means any entity entering into a contract with the Contractor for the performance of work under the Covered Contract from a facility located in the United States, including suppliers producing or supplying vehicle component parts.
- 3.28 TOTAL DOLLAR COMMITMENT** means the total dollar value of the sum of the minimum Hourly Wage Rate and minimum Fringe Benefit Amounts multiplied by the total Direct Hours for all New Hires and Retained Workers committed to by the Contractor and all participating Subcontractors in the USEP or LEP proposal.
- 3.29 TOTAL HOURLY WAGE** means the minimum Hourly Wage Rate and minimum Fringe Benefit Amount, if any, to each New Hire and Retained Worker for the relevant job classification.
- 3.30 U.S. EMPLOYMENT PLAN (USEP)** means a written description of the number and quality of U.S. jobs to be created and/or retained under a Proposal pursuant to a prospective Contract award. A U.S. Employment Plan will contain the elements and forms set forth herein as requested in the U.S. Employment Plan Forms. The U.S. Employment Plan must also contain the information and supporting documentation requested in the RFP.
- 3.31 U.S. FACILITY** means a physical plant, factory or office located within the 50 states, District of Columbia, or territories of the United States.
- 3.32 VETERAN** means a person who served in the active military, naval, or air service and who was discharged or released under conditions other than dishonorable.
- 3.33 WORKFORCE TRAINING** means a program that will create permanent, industry recognized credentials and/or skills that are stackable, transportable, and/or transferable for New Hires and/or Retained Workers under a Covered Contract, including all activities related to the provision of skills, knowledge and capacity to New Hires and/or Retained Workers working on the Covered Contract. Allowable expenditures for Workforce Training under a USEP or LEP may include: (a) funds spent on teachers, trainers or special equipment to help New Hires and/or Retained Workers build the skills necessary to successfully work on the Covered Contract; (b) wages and Fringe Benefit Amounts spent on experienced Contractor or Subcontractor employees not providing Direct Hours on the Covered Contract for work time during which those experienced employees provide documented on-the-job training to New Hires and/or Retained Workers; (c) sums paid by a Contractor or Subcontractor to an outside workforce development program, so long as the skills acquired in such program is related to

the Manufacture and/or Final Assembly of vehicles under the Covered Contract. Workforce Training may include publicly or privately funded workforce development programs, registered apprenticeship programs, an apprenticeship program registered with the Department of Labor, and/or a federally-recognized State Apprenticeship Agency that complies with the requirements under parts 29 and 30 of title 29, Code of Federal Regulations; and may include pre-apprenticeship commitments to provide training that helps participants in apprenticeship programs prepare for and successfully complete their training.

DRAFT



# Manufacturing Careers Policy

Operations, Safety and Customer Service Committee Item #  
November 17, 2022



**Metro**

# Metro's Manufacturing Careers Policy

## **The Manufacturing Careers Policy (MCP) consolidates the administration of the United States Employment Program (USEP) and Local Employment Program (LEP)**

**USEP:** sets-forth specific commitments for creating employment opportunities in the United States in connection with Rolling Stock procurements. USEP is applicable to all of Metro's federally funded rolling stock procurements and related contracts.

**LEP:** the program to include local/geographic and economic based labor hiring preferences on locally funded Rolling Stock procurements.

# Metro's USEP/LEP Program Attainments

## **7 Active Rolling Stock Contracts include the LEP program**

- Over \$20 million of wages & benefit allocated to LEP program on base contracts.
- Additional amount of over \$25 million of wages & benefits on option years (if exercised).
- Over \$14 million investment for local facility investment.
- Disadvantaged Wages Commitments.

## **2 Closed Rolling Stock Contract include the USEP program**

- Over \$180 million of wages & benefits allocated to USEP program.

# Metro's Manufacturing Careers Policy

## **The MCP will include additional stipulations such as:**

- Lowering the dollar threshold of the procurement size for USEP and LEP applicability, from \$100 million to \$50 million.
- Adding contractual remedies for contractual non-compliance with the USEP or LEP.
- USEP and LEP evaluation mechanism to score all applicable proposal evaluations.
- Adding a retained workers category to provide long-term career opportunities for new hires under the USEP and LEP.





# Metro's Manufacturing Careers Policy

Adoption of the MCP is in-line with the Metro Board's approval of a Project Labor Agreement and Construction Careers Policy for its construction contracting program.

The MCP, combined with the PLA and the CCP, ensure that Metro is creating opportunities for disadvantaged workers in sectors in which it is heavily investing: construction contracting and rolling stock manufacturing.



The background features large, 3D-style letters 'M' and 'A' in a light cream color, set against a dark green circular backdrop. This is further framed by a large, curved orange shape that overlaps a dark grey or black area at the bottom.

Thank you



Metro®