

San Francisco Public Utilities Commission Rules and Regulations Implementing the Social Impact Partnership Program

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**San Francisco
Water Power Sewer**

Services of the San Francisco Public Utilities Commission

THE SOCIAL IMPACT PARTNERSHIP PROGRAM

The San Francisco Public Utilities Commission (SFPUC) strives to be a good neighbor in the communities that are impacted by our water, power and sewer operations, services, and infrastructure. Our Social Impact Partnership (SIP) Program provides an opportunity for SFPUC contractors to engage in corporate social responsibility supporting our communities.

AUTHORITY FOR AND PURPOSE OF THESE RULES AND REGULATIONS

By Ordinance No. 261-22, the San Francisco Board of Supervisors adopted San Francisco Administrative Code Chapter 21F authorizing the San Francisco Public Utilities Commission (SFPUC) to implement a SIP Program by adopting Rules and Regulations.

The SFPUC has adopted these Rules and Regulation, as may be amended, to provide guidance to Contractors and Beneficiaries for implementation of the SIP Program and compliance with Chapter 21F. In any discrepancy between these Rules and Regulations and Chapter 21F, the Ordinance shall control.

Commission actions:

Action	Resolution No.	Date Adopted	Effective Date
Adopt Rules and Regulations	23-0075	April 11, 2023	April 22, 2023
Amend Rules 1.0, 4.5(C)	23-0180	September 26, 2023	September 26, 2023

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RULE 1.0 - DEFINITIONS

Unless otherwise expressly stated and defined in a separate Rule, the following terms in bold font shall, for the purpose of these Regulations, have the meaning indicated following the colon (:).

Beneficiary: An organization that is eligible to receive a Social Impact Commitment.

- A Beneficiary must be: (1) a nonprofit corporation that has established and maintains valid nonprofit status under Internal Revenue Code Section 501(c)(3), as amended, and all rules and regulations promulgated under that section; (2) an organization that has a fiscal agent that is a nonprofit corporation that has established and maintains valid nonprofit status under Internal Revenue Code section 501(c)(3), as amended, and all rules and regulations promulgated under said section and which provides that organization with fiduciary oversight, financial management, and administrative services related to its operation; or (3) a public school, which may include a public school district, County Office of Education, and/or a public college or university.
- The following are not eligible Beneficiaries: any (1) City department, office, board, commission, or other entity; (2) City official or employee or Relative of a City official or employee, unless the resulting benefit is incidental to and not unique to the City official or employee or Relative, but rather benefits the general public or a particular community that is the focus or target of the Social Impact Commitment; or (3) entity subject to an order of debarment or suspension under San Francisco Administrative Code Chapter 28.
- A Beneficiary must be independent of the Contractor and its subcontractor(s) (at any tier) and their respective officers and employees. No Contractor or subcontractor officer or employee or Relative of an officer or employee may own, control, or manage a Beneficiary.

Bonus: A downward adjustment of the total bid price or upward adjustment of the total rating score of a proposal, as applicable to the competitive process.

City: The City and County of San Francisco.

Contractor: Any private person or entity that enters into a direct contract with the SFPUC for a Covered Contract. Public entities are not Contractors.

Covered Contract: A contract awarded or to be awarded by the SFPUC that is:

- (1) a professional services contract, procured under Chapters 6 and 21 of the Administrative Code, with an award value of \$5 million or greater;
- (2) a power procurement contract, procured under Chapter 21 of the Administrative Code, with an award value of \$5 million or greater, which includes (a) purchases from projects constructed in San Francisco or on property owned by the City, (b) new projects where the Contractor identifies an intent to construct a project, or add construction to an existing project, to supply the product purchased under the contract, or (c) existing projects located in

California where the contract identifies a specific project that will supply the product being purchased and the purchase does not support construction of a new project; or

(3) a public work or improvement contract procured under Chapter 6 of the Administrative Code with an award value of \$25 million or greater, including but not limited to competitively bid (§ 6.20), design-build (§ 6.61), construction manager/general contractor (§ 6.68), and best value (§ 6.74) procurements.

Financial Interest: See California Political Reform Act, California Government Code Section 87103, and its implementing regulations.

General Manager: The SFPUC General Manager or the General Manager's designee.

Program Participant: A Contractor that has agreed to provide or a Beneficiary that has agreed to receive a Social Impact Commitment.

Relative: See Campaign and Governmental Conduct Code Section 3.610.

Rules: These Rules and Regulations.

Social Impact Commitment (or Commitment): A Contractor's commitment, as proposed by the Contractor in response to a solicitation for a Covered Contract, to provide either Direct Financial Contributions or Volunteer Hours (see Rule 3.2) supporting one or more Beneficiaries during the term of the Covered Contract. An in-kind donation with potential monetary value, other than Volunteer Hours, is not eligible as a Social Impact Commitment.

RULE 2.0 – GENERAL SIP PROGRAM INFORMATION

The following SIP Program information is applicable to all program participants and Covered Contracts:

2.1 NO COST TO THE CITY

The Contractor shall perform its Social Impact Commitment at no cost to the City. The Contractor may not charge the City, directly or indirectly, for any costs incurred in fulfilling or implementing its Social Impact Commitment.

2.2 CONTRACTOR SOLELY RESPONSIBLE

The Contractor is solely responsible to fulfill its Social Impact Commitment. A Contractor may not require a subcontractor, subconsultant, supplier, or anyone else to perform its Social Impact Commitment. The Contractor may retain entities or individuals to assist the Contractor in implementing its Social Impact Commitment so long as any cost incurred to pay those entities or individuals is not charged or otherwise passed through to the SFPUC.

2.3 SELECTION OF BENEFICIARIES

A Contractor must identify Beneficiaries for its Social Impact Commitment. No City department, officer, or employee, including but not limited to the SFPUC, its Commissioners, officers, and employees, shall direct or require any Contractor to donate time and/or money to any particular individual or entity.

2.4 ENFORCEMENT OF COMMITMENT

Only the City may enforce a Covered Contract and the SIP Program requirements. A Beneficiary shall not be considered a third party beneficiary under any Covered Contract; no party has a private right of action against the City under Chapter 21F or these Rules and Regulations.

2.5 PUBLIC DASHBOARD

The SFPUC publishes and maintains a publicly available dashboard reporting information about Covered Contracts, Contractors, Beneficiaries, and the performance of associated Social Impact Commitments. The Dashboard may be found online at: <https://sfpuc.org/socialimpact>

2.6 RULES AND REGULATIONS

Participation in the SIP Program by submission of a Proposal and incorporation of Social Impact Commitments in a Covered Contract constitutes a Contractor's acknowledgment and agreement that it shall comply with these Rules and Regulations as may be amended during the term of a Covered Contract.

RULE 3.0 COVERED CONTRACT COMPETITIVE SELECTION PROCESS

3.1 GENERALLY

The SFPUC engages in a competitive process for most Covered Contracts by issuing a Request For Proposals or Invitation For Bids or similar solicitation document (**Solicitation**). The SIP Program is one component of the competitive process for Covered Contracts and may, or may not, be a deciding factor in determining the successful Contractor. The SFPUC shall consider each SIP Program Commitment Proposal (**Proposal**) as a factor separate from and in addition to other qualitative or quantitative scoring criteria for the Covered Contract.

Following a competitive process, the SFPUC may or may not award a Covered Contract and reserves the right in all Solicitations to reject any or all proposals.

3.2 PROPOSALS AND PROPOSED COMMITMENTS

To participate in the SIP Program, a prospective Contractor (**Proposer**) must submit a Proposal in response to a Solicitation. A Proposal may include one or more proposed commitments (**Proposed Commitment**). For each Proposed Commitment, Proposer shall identify (A) the type and amount, (B) the Program Area(s), (C) the Geographic Area(s), and (D) the Contractor's key SIP Program personnel:

(A) Proposed Commitment Type and Amount

Proposed Commitments for participation in the SIP Program must be in the form of:

- (1) Direct Financial Contributions** that Proposer will pay directly to a Beneficiary; and/or
- (2) Volunteer Hours** that Proposer will provide to support a Beneficiary.

The amount of a Proposed Commitment must be delivered as direct services and programming in support of a Program Area (see (B) below) only where key performance indicators and outcomes can be reported, not toward a Beneficiary's general operating or overhead costs, fundraising events, or other non-program-based expenses.

Proposed Commitments shall not include Contractor's costs associated with participation in the SIP Program, such as administrative costs, employee time, SIP Program reporting requirements, costs to deliver the Proposed Commitment, or cost of travel to/from Commitment locations. All such costs shall be borne by the Contractor at no cost to the SFPUC.

The Contractor's funding or performance of its Proposed Commitment may not be conditioned upon, tied to, or dependent on funds or sources of funding receivable from the SFPUC for the Covered Contract, including amounts held by the City in retention.

(B) Program Areas

A Proposed Commitment must be performed in one or more of the following Program Area(s):

Job Exposure, Training and Internships: Focused on building a diverse and skilled pool of workers for the twenty-first century, and may include local recruitment, case management, barrier removal, soft skills training, technical skills training via California

State-approved apprenticeship programs and community-based organizations, or building the worker pipeline to meet State and City-mandated workforce and contracting requirements.

Small Business Support: Focused on the support of small local businesses in the communities adjacent to the project, and may include training, mentoring, technical assistance, or business development, especially in the construction and professional service industries.

Public Education: Focused on strategies that promote science and engineering education and educational advancement for local disadvantaged communities through partnerships with local educational nonprofits and public schools that take into consideration the priorities of the local public school district.

Environment and Community Health: Focused on strategies to address environmental justice disparities, improve health outcomes in the community, nurture environmental stewardship, and support the continued presence and well-being of long-term residents and businesses in local communities.

(C) Geographic Areas

A Proposed Commitment must be performed in the Geographic Area(s) specified in the Covered Contract Solicitation.

Examples of Geographic Areas that may be specified in the Solicitation may include the SFPUC service area (Tuolumne, Mariposa, Stanislaus, San Joaquin, San Francisco, Alameda, San Mateo, and Santa Clara counties); a county where San Francisco may own property; and/or the county where a project or contract is located. The Solicitation may identify specific neighborhoods or locations for Proposed Commitments.

(D) The Contractor's Key SIP Program Personnel

The Proposer must identify its key SIP Program personnel. The key personnel shall include a SIP Executive-in-Charge and a SIP Coordinator. The SIP Executive-in-Charge will manage the implementation of the SIP Commitments, provide oversight, and ensure that the proposed Social Impact Commitments are delivered in a transparent and accountable manner. The SIP Coordinator will organize, plan, track, and report on the progress of all Social Impact Commitments.

3.3 EVALUATION CRITERIA AND SCORING PROCESS

Solicitations shall include evaluation criteria for Proposals and the procedure for evaluation and scoring as appropriate to the specific Covered Contract.

SFPUC staff shall confirm that the type and amount of Proposed Commitments conform to the requirements of the Covered Contract Solicitation; that each Proposed Commitment is within a Program Area; that each Proposed Commitment is within the Geographic Area specified in the Solicitation; and that a SIP Executive in Charge and a SIP Coordinator are identified (**compliant Proposed Commitment**).

A SIP Program evaluation panel shall then evaluate and score each Proposal. The members of the panel shall have no Financial Interest in any bidder/proposer or in any proposed Beneficiary, if any is identified in a Proposal.

The panel shall assign a **Commitment value** to each Proposal calculated as total Direct Financial Contributions plus total Volunteer Hours (at a rate of \$150/hour). Subject to approval of the General Manager, additional criteria may be considered as described in the Solicitation.

The panel shall consider only compliant Proposed Commitments; non-compliant Proposed Commitments or portions of Proposed Commitments shall not be included in the evaluation or the calculation of Commitment value.

3.4 APPLICATION OF BONUS

Following the evaluation of all Proposals received in response to a Solicitation, the Proposal with the total highest Commitment value will receive the maximum available Bonus. Proposals with lower total Commitment values will receive a Bonus prorated in comparison to the Proposal with highest Commitment value.

For qualifications-based Solicitations (where price is not the deciding factor), such as professional services and alternative delivery construction, the available Bonus will be up to 5% of the total points allocated to the underlying technical portion of the Solicitation. For example:

SIP Proposals Submitted By 3 Proposers (A, B, and C)	Proposer A: Proposes 500 Volunteer Hours and \$25,000 in Direct Financial Contributions	Proposer B: Proposes \$50,000 in Direct Financial Contributions	Proposer C: No SIP Proposal Submitted
Calculation of SIP Commitment Value	500 Hours X \$150/Hour = \$75,000 Value + \$25,000 Direct Financial Contributions Value	\$50,000 Direct Financial Contributions Value	0 Volunteer Hours + \$0 Financial Contributions
Total Value of Proposed SIP Commitments	\$100,000	\$50,000	\$0
Pro-Rated SIP Bonus (up to maximum 5% of the total points allocated to the underlying technical portion of the Solicitation)	5% of the total points allocated to the technical portion of the Solicitation	2.5% of the total points allocated to the technical portion of the Solicitation	0% of the total points allocated to the technical portion of the Solicitation
Using Hypothetical Scenario Where 100 Total Points Are Allocated to the Underlying Technical Portion of the	5	2.5	0

Solicitation, Number of SIP Bonus Points that Would be Added to Each Proposer's Underlying Technical Score (Which is Separately Evaluated)			
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For competitively bid Solicitations (where price is the deciding factor), the available Bonus will be applied as a bid discount as follows:

- Bid discount up to 5% for construction contracts of \$25-\$50 million.
- Bid discount up to 4% for construction contracts of \$50-\$100 million.
- Bid discount up to 3% for construction contracts of \$100 million or more.

For power procurement Solicitations, the available Bonus will be up to 5% of the total available points. Proposals will receive a Bonus that is prorated based on the value of the total Commitment as a percentage of the annual energy or power capacity offered in the Proposal. For example:

SIP Proposals Submitted By Three Proposers (A, B, and C)	Proposer A: Proposes 167 Volunteer Hours and \$25,001 in Direct Financial Contributions	Proposer B: Proposes \$50,000 in Direct Financial Contributions	Proposer C: No SIP Proposal Submitted
Calculation of SIP Commitment Value	167 Hours X \$150/Hour = \$25,000 Value + \$25,001 Financial Contributions Value	\$50,000 Financial Contributions Value	0 Volunteer Hours + \$0 Financial Contributions
Total Value of Proposed SIP Commitments	\$50,001	\$50,000	\$0
Proposal Examples	Proposer A: 100 MW solar project located in Riverside County	Proposer B: 50 MW solar project located in Alameda County	Proposer C: 75 MW wind project located in Kern County
Annual Energy Produced by Projects	300,000 megawatt-hours per year	110,000 megawatt-hours per year	230,000 megawatt-hours per year
Total \$ Value of Proposed SIP Commitments Relative to Annual Energy Produced	17%	45%	0%
<i>or</i>			
Total Value of Proposed SIP Commitments	\$50,001 / 100 MW = 500.01	\$50,000 / 50 MW = 1000	N/A

Relative to Capacity Offered.			
Result Same under Either Power Procurement Solicitation Approach			
Number of SIP Bonus Points that Would be Added to Each Proposer's Underlying Score (Which is Separately Evaluated)	2.5	5	N/A

RULE 4.0 – COVERED CONTRACT SIP PROGRAM REQUIREMENTS

4.1 SOCIAL IMPACT COMMITMENTS

A Covered Contract shall incorporate the Contractor’s Proposed Commitments that were considered part of the Commitment value during the evaluation and scoring process. Once incorporated, a Proposed Commitment shall become a Social Impact Commitment and the obligation of the Contractor to perform in the amount and within the term of the Covered Contract.

The Contractor’s obligation to perform a Social Impact Commitment is separate from, and in addition to, any other regulatory or legal requirements under the Covered Contract, including but not limited to, the requirements of the Local Business Enterprise program, Local Hire, First Source Hiring, Project Labor Agreement, or any other requirements of the City or other regulatory entity.

The Contractor’s provision of Social Impact Commitments does not entitle it to additional work beyond that specified within the Covered Contract.

4.2 SUBCONTRACTORS

Subcontractors may participate in the delivery of Social Impact Commitments. The Contractor, however, shall remain solely responsible for the performance of such Commitments. A Contractor may not condition a subcontract on participation in the SIP Program and cannot pass through the contractual obligation to perform Social Impact Commitment to a subcontractor, subconsultant, or vendor.

4.3 TERM OF COMMITMENT DELIVERY AND COMPLETION

The Contractor’s Social Impact Commitment must be fulfilled during the term of the Covered Contract, or during the term specified in the Covered Contract for the delivery of Commitments. Actions taken by the Contractor before the term of the Covered Contract begins or after it ends may not count towards the fulfillment of the Social Impact Commitment for that contract.

When the Contractor has demonstrated and the SFPUC has confirmed completion of each SIP Commitment, all SIP Program requirements under these Rules and Regulations and the SIP provisions of the Covered Contract shall be deemed satisfied. If Social Impact Commitments have been fulfilled and all of the required reporting and documentation have been submitted, the Contractor may request a closeout letter from the SFPUC. A closeout letter shall not excuse performance of additional Social Impact Commitment if the Covered Contract is increased as provided under Rule 4.4.

4.4 MODIFICATIONS

(A) Contract Increases

When the SFPUC modifies a Covered Contract that will result in the increase of 10% or more of the original Covered Contract amount, the SFPUC shall require that the Contractor propose a proportional increase to its Social Impact Commitment for the Covered Contract. Such increase shall be proportional to the increase in contract

amount under the modification and shall not increase costs to the SFPUC. Approval of any such modification will be contingent on confirmation by the SFPUC that the Commitment value is proportionate.

(B) Contract Decreases

Contractor shall not be entitled to a decrease in its Social Impact Commitments commensurate with any decrease in time or money to the Covered Contract. The SFPUC, however, may consider a decrease in the Social Impact Commitments when:

- (1)** the SFPUC decreases the Covered Contract amount to be less than \$5 million; or
- (2)** the SFPUC terminates the Covered Contract before the original expiration or completion date.

Under either of these circumstances, the Contractor may request in writing that the SFPUC approve a decrease in its Social Impact Commitments. Contractor must demonstrate in its request that it is otherwise compliant with SIP Program requirements.

(C) Modifications to Social Impact Commitments

In the event that fulfillment of a Social Impact Commitment as provided in the Covered Contract becomes impossible or impracticable, the Contractor may request a modification to its Social Impact Commitments by documenting the impossibility or impracticability of proceeding with its existing Social Impact Commitments and proposing one or more alternatives, subject to review and approval by the SFPUC as provided in the Covered Contract. Any proposed alternative must match the type and amount of the subject Social Impact Commitment.

4.5 SIP WORK PLANS

Unless otherwise specified in a Solicitation or Covered Contract, the Contractor must submit a proposed SIP Work Plan within 60 days of a Notice to Proceed, Notice of Contract Award, or Contract execution. The SFPUC and the Contractor will then meet and confer on the proposed SIP Work Plan and the SIP Program requirements. The SFPUC will use the final SIP Work Plan to assess progress on Social Impact Commitment delivery regularly throughout the term of the Covered Contract.

A SIP Work Plan shall include the following detailed information:

(A) Social Impact Commitment Information

The Contractor shall identify the type and amount, the Beneficiary (see Rules 1.0 and 2.3), the Program Area, and the Geographic Area for each Social Impact Commitment.

(B) Performance Benchmark Information

The Contractor shall identify key benchmarks that align with the underlying technical Covered Contract schedule. Specifically, SIP Work Plan benchmarks shall detail how the Contractor plans to be on track with Commitment delivery at 25%, 50%, 75%, and 100%

of Covered Contract completion (defined as being within 10% of the progress and completion of the underlying contractual term).

(C) Beneficiary Information

The Contractor shall identify a Beneficiary for each Social Impact Commitment by name and address. In the Work Plan, the Contractor must confirm the following information about each Beneficiary:

- Eligibility: (1) Confirmation of current 501(c)3 status by requesting a link to the organization’s profile on the State Registry of Charitable Trusts and verifying that registry status is “current” or by receiving a copy of official State documentation providing current nonprofit status; or (2) confirmation of a public school through the California Department of Education website: <https://www.cde.ca.gov/schooldirectory>.
- Program Area and Geographic Area: The Beneficiary provides services within the identified Program Area(s) and Geographic Area(s).
- Independence: The Beneficiary is not owned, operated, or controlled by the Contractor or its subcontractor(s) or any respective officer or employee or Relative of an officer or employee.

In the SIP Work Plan, the General Manager may require the Contractor to enter into one or more memoranda of understanding (MOUs) with one or more Beneficiary(ies) to specify the purpose of the contribution and require the Beneficiary to report to the Contractor on key performance indicators for the Commitment.

4.6 REPORTING

Contractors must submit regular, bi-annual, SIP Program performance reports to the SFPUC. Reports must include a statement of compliance signed by an authorized representative of the Contractor indicating that the report is accurate and complete.

Contractors shall submit all reports, required documentation, and details regarding key performance indicators to the SFPUC via the online portal: www.sfpuc.org/SIPreporting.

Reports submitted without corresponding documentation will not be accepted.

Contractors must complete reporting at the end of each reporting period, including if there are no activities. Failing to report and/or no response by the specified deadlines will be considered non-compliance and subject the Contractor to corrective action (see Rule 5 below).

The biannual reporting periods are as follows:

Q1/Q2 Biannual Report for Social Impact Commitments delivered between July 1 to December 31, and all required documentation. Reporting deadline: January 31.

Q3/Q4 Biannual Report for Social Impact Commitments delivered between January 1 to June 30, and all required documentation. Reporting deadline: July 31.

Contractors will receive reminder emails from the SFPUC leading up to the biannual reporting deadlines, and after submission will receive a notification of receipt.

The SFPUC will review all submitted reports and supporting documentation for completion and accuracy, and will contact Contractors regarding any missing information or questions regarding their submissions.

Contractors must notify the SFPUC of any staffing changes related to the Contractor's SIP Executive in Charge and the SIP Coordinator within 30 days of a staffing change.

4.7 MONITORING

All Contractors shall cooperate fully with the SFPUC in monitoring and compliance activities regarding the Covered Contract.

The SFPUC will regularly monitor progress made on each SIP Covered Contract to ensure the delivery of Commitments are on track and within 10% of the progress and completion of the underlying contractual term.

SFPUC shall provide Contractors with biannual summaries of Commitment delivery to date, following each reporting period deadline.

Contractors may rely on the public dashboard to confirm their recorded performance and the progress of their Social Impact Commitments.

SFPUC shall issue a report for each Covered Contract before final payment is issued to confirm compliance with the Social Impact Commitments and contractual requirements.

The SFPUC reserves the right to verify documentation at any time, including contacting Beneficiaries to confirm receipt of Commitments.

RULE 5.0 - ENFORCEMENT

5.1 DETERMINATION OF NONCOMPLIANCE

Failure by the Contractor to perform its Social Impact Commitments, follow its SIP Work Plan, or submit timely reports may result in a determination of noncompliance.

The SFPUC will consider a determination of noncompliance on a progressive basis throughout the term of the Covered Contract. Compliance review will occur at delivery benchmarks (see Rule 4.5(B)), commensurate with performance under the Covered Contract: Phase 1 is at 25%, Phase 2 is at 50%, Phase 3 is at 75%, and Phase 4 is at 100%.

(A) Phase 1 Noncompliance (25% completion)

SFPUC will notify a Contractor of its Phase 1 noncompliance in writing and will require the Contractor to immediately address the noncompliance and submit a corrective action plan.

(B) Phase 2 Noncompliance (50% completion)

SFPUC will notify a Contractor of its Phase 2 noncompliance and will require the Contractor to immediately address the deficiency and submit a corrective action plan.

If the Contractor has continuing or repeated noncompliance from Phase 1, the SFPUC may in its sole discretion withhold payment from amounts due and owing under the Covered Contract equal to the amount of undelivered Social Impact Commitments to keep pace with the term of the contract or the Contractor's SIP Work Plan, whichever is less.

(C) Phase 3 Noncompliance (75% completion)

SFPUC will notify a Contractor of its Phase 3 noncompliance and will require the Contractor to immediately address the deficiency.

If the Contractor has continuing or repeated noncompliance from Phases 1 and/or 2 and the Phase 3 noncompliance is not promptly resolved, the SFPUC may in its sole discretion withhold payment from amounts due and owing under the Covered Contract equal to the amount of undelivered Social Impact Commitments to be on pace with the term of the Covered Contract or the Contractor's SIP Work Plan, whichever is greater.

If the Contractor by Phase 3 has substantially disregarded its Social Impact Commitments and SIP Work Plan, then the SFPUC may in its sole discretion withhold all payments under the Covered Contract up to 100% of the value of the Social Impact Commitments. The Contractor may request release of funds upon demonstrating full compliance with the SIP Program requirements.

(D) Phase 4 Noncompliance (100% completion)

Failure to perform Social Impact Commitments in full by the substantial completion or expiration date of the Covered Contract shall result in the assessment of actual damages in the amount equal to the total value of the undelivered Social Impact Commitments

plus liquidated damages in an amount equal to 10% of the total Social Impact Commitment value to cover the SFPUC cost of monitoring and administration, an amount which Contractor acknowledges and agrees would be difficult or impossible to determine.

Additionally, a Contractor in noncompliance in Phase 4, that has repeatedly over the term of the Covered Contract failed to respond to SFPUC staff, submit reports, and perform in conformance with its SIP Work Plan, may be denied a Bonus in its next two Proposals for future SFPUC contract opportunities. In such event, the SFPUC will notify the Contractor in writing of such determination.

5.2 APPEAL

A Contractor may seek administrative appeal from a determination of noncompliance and assessment of damages or denial of a Bonus based on past performance under the SIP Program.

The Contractor may appeal in writing with a substantive explanation of the circumstances that resulted in the noncompliance determination and any corrective action taken.

In response to an appeal, the General Manager shall appoint a Hearing Officer who had no involvement in the administration of the Covered Contract or the Social Impact Commitments. The Hearing Officer shall review the appeal and may seek additional information, including but not limited to additional written documentation and/or a hearing with relevant parties. The Hearing Officer shall issue a decision that shall be considered the final administrative determination for the SFPUC; the decision may sustain, review, or modify previous determinations and actions.

5.3 DISTRIBUTION OF DAMAGES

If the SFPUC imposes actual or liquidated damages as a remedy against a Contractor for non-compliance, the Controller shall withhold the damages assessed until such time as either the Contractor has conceded to or acquiesced in the assessment or, in the event of an appeal, there is a determination no longer subject to judicial review. The Controller shall then deposit the amount withheld into a special account which shall be created for the sole purpose of receiving such funds. The funds deposited into this account shall be distributed in accordance with the procedures below.

To the extent possible, the funds will be delivered to the Beneficiaries in the amounts stated in the Covered Contract Social Impact Commitments and the Contractor's Work Plans.

If a Beneficiary no longer exists or no longer meets the criteria as an eligible recipient under the SIP Program, the General Manager shall appoint a SIP Accountability Panel to recommend one or more Beneficiaries within the Program Area and Geographic Area of the original Beneficiary. The SIP Accountability Panel shall issue its recommendation and supporting information to the General Manager for distribution of damages.

RULE 6.0 - EXEMPTIONS AND WAIVERS TO SIP PROGRAM REQUIREMENTS

The following categories of contracts shall be exempt from the SIP Program and shall not be considered Covered Contracts:

- As-Needed public work construction contracts.
- As-Needed professional service contracts that do not guarantee task orders that in the aggregate could be valued at \$5 million or more.
- Electricity purchase contracts for resource adequacy capacity to meet state regulatory requirements.
- Electricity purchase contracts subject to San Francisco Administrative Code Section 21.43 where the SFPUC is a respondent to, or participant in, another party's solicitation process.

Other than those categories of contracts listed above, any exemption or waiver for specific contracts shall be subject to Commission approval upon a determination by the General Manager that the best interests of the SFPUC and its ratepayers are served by such exemption, such as when the inclusion of the SIP Program in a Solicitation would result in a negative financial or operational impact.