



Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Vice Mayor Kamei
Councilmember Candelas
Councilmember Cohen

SUBJECT: SEE BELOW

DATE: 04/07/2023

APPROVED:

Rosemary Kamei
Sam Cohen *Conny Cand*

SUBJECT: WAGE THEFT PREVENTION POLICY REVISION

RECOMMENDATION

1. Adopt the resolution with the following modifications included:

a) Regarding the janitorial and security services provisions:

- i) Remove the following:
“A potential contractor that has submitted a formal or informal bid or proposal for a procurement for security guard or janitorial services will not automatically be disqualified under Section 1 above from the procurement if the proposer can provide documentation that demonstrates how they intend to comply with this Policy including wage, hours, working conditions, and a grievance process for wage and hour claims. The proposer may rely on provisions in a collective bargaining agreement or other documentation.”
- ii) In its place, add the following:
“A potential contractor that has submitted a formal or informal bid or proposal for a procurement for security guard or janitorial services will not automatically be disqualified under Section 1 above from the procurement if the proposer is covered by a collective bargaining agreement prior to date of contract, or can prove they have a mutually agreed upon process in place between employer and employees, which expressly provides for wages, hours of work, working conditions, and a mechanism for workers to file wage complaints and resolve wage issues through a grievance procedure.”

b) Ensure that Civil Wage and Penalty Assessments (CWPAs) and Bureau of Field Enforcement (BOFE) citations for wage theft are include in the policy, and disqualify contractors with two or more final wage theft judgments in the last five years, by adopting the following modifications to the proposed language:

i) Under *Bid or Proposal Disqualification Circumstances*, section 1:

“A potential contractor that has submitted a formal or informal bid or proposal to provide supplies, materials, goods, and/or services to the City pursuant to San José Municipal Code Chapter 4.12 *shall* be disqualified if the potential contractor has received two or more final wage judgments from the California Labor Commissioner’s Office in the last five years prior to the date of submission, including but not limited to Civil Wage and Penalty Assessments (CWPAs) and Bureau of Field Enforcement (BOFE) citations related to wages, hours or benefits, or has one or more unpaid wage judgments including but not limited to CWPAs and BOFE citations in the past three years prior to the date of submission of a bid or proposal to provide supplies, materials, goods and/or services.”

ii) Under *Mandatory Disclosure Requirement*, paragraph 2:

The City shall disqualify a potential contractor if the potential contractor has been found by the California Labor Commission to have violated applicable wage and hour laws, including but not limited to CWPAs and BOFE citations related to wages, hours, or benefits, on two or more occasions or has one unpaid wage judgment, assessment, or citation.

2. As approved and directed in February 2020 by the Mayor and Council, direct staff by November 2023 to coordinate with the South Bay Labor Council, the Santa Clara and San Benito Counties Building and Construction Trades Council, and the Wage Theft Coalition to develop and return to Council with a Responsible Construction Ordinance for the City of San Jose.

3. Direct staff to study if a condition for successful bidders to demonstrate that workers are covered by Collective Bargaining Agreements could also be applied to construction in the future.

BACKGROUND

It has been suggested to add the phrase “collective bargaining agreement or equivalent”, allowing bidders to claim that they will develop some alternative approach that is not a collective bargaining agreement but is “equivalent” to one. This language should not be used, as it is ambiguous, and further, it opens the possibility that companies which mandate provisions harmful to workers, like forced arbitration clauses, could argue that such anti-worker provisions are “equivalent” to a bona fide collective bargaining agreement which protects workers’ rights to their wages, therefore undermining the intent of the Wage Theft Policy.

Collective Bargaining Agreements would protect workers if a contractor failed to comply with an arbitration award ordering the payment of back wages, a union would be able to petition a court for an order reaffirming the award. Currently, workers are left to defend themselves due to the state's enforcement capacity. The currently proposed language in the staff memo is even more harmful to janitorial and security workers. By allowing any vendor with a history of wage theft to claim exemption from the Wage Theft policy simply by stating that they "will comply" with labor requirements -- even if they already have a history of wage theft, or have unpaid wage theft judgments where they are actively not complying with State orders to pay their workers -- the current language creates a loophole so large that it effectively exempts all janitorial and security contracts from the Wage Theft Policy. That is completely counter to Council intent and direction on this issue.

Responsible Construction Ordinance

Right in the heart of downtown San Jose, construction workers on the Silvery Towers condo project, a project by KT Urban that took years to build and is still primarily unoccupied, were made to work without being paid, held in squalid conditions, and threatened with harm if they spoke out. The unlicensed sub-contractor on the project was arrested, convicted, and is serving a federal prison sentence for his crime¹. Silvery Towers is now known as Slavery Towers and when this story broke, everyone thought the San Jose City Council would take swift action to remedy these solvable problems. We need to give the Responsible Construction Ordinance the urgency it deserves.

1. <https://sanjosespotlight.com/san-jose-lawmakers-approve-prevailing-wage-requirements-for-private-construction-projects/>

For questions, please contact Omar Din, District 1, at omar.din@sanjoseca.gov, Lam Nguyen, District 4, at lam.nguyen@sanjoseca.gov, Teddy Adera, District 8, at teddy.adera@sanjoseca.gov.

The signers of this memorandum have not had, and will not have, any private conversation with any other member of the City Council, or that member's staff, concerning any action discussed in the memorandum, and that each signer's staff members have not had, and have been instructed not to have, any such conversation with any other member of the City Council or that member's staff.