

Wage Theft Policy Update

Item # 3.6

March 28, 2023

Matt Loesch, Acting Public Works Director

Chris Hickey, Division Manager, PW Office of Equality Assurance

Policy Goals

Primary Goal:

Disincentivize wage theft across multiple industries by eliminating bad actors from bid consideration and **incentivize** payment of outstanding judgments

Secondary Goal:

Provide **crucial services** on an expedient timeline without having to waive the Policy

Why Revise Policy Now?

Current Policy Issues:

- Overly broad criteria for mandatory disqualification lead to unintended impacts
- Staff has to make implementation and enforcement decisions with incomplete and inconsistent information

Moment of Opportunity:

- Labor Commissioner's Office new public data portal
- Labor Commissioner Judgments go unpaid more than half the time

Current Policy: Bidder Disqualification

City **shall** disqualify if, in the last five (5) years:

- Two (2) or more **paid violations**
- Any **unpaid final judgments**

City **may** disqualify if:

- Only one (1) **paid violation** in a five-year period
- **Bid Certification** is inaccurate

Bids on **Public Works** projects are exempt from the current policy

Policy Revision Recommendation

Disqualification

- Mandatory :
 - “Judgments” means California Labor Commissioner Judgments or Final Decisions
 - Paid Judgement - Three or more in last three years
 - Unpaid Judgements - One or more
- Discretionary:
 - Review all judgments and decisions relating to wage and hour violations
 - Disqualify bad actors based on cumulative wage theft history
- Include Public Works Construction
- Maintain requirement to disclose all judgments and decisions

Policy Revision Recommendation

Janitorial and Security Guard Services

Proposers not mandatorily disqualified if provide documentation to demonstrate how they will comply with requirements of:

- Wages
- Hours
- Working conditions
- Grievance process for wage and hour claims

Proposers may rely on provisions in a collective bargaining agreement or other documentation

- OEA guidance through labor addendum in janitorial and security guard agreements & RFP templates
- Current Security Guard Service agreements terminate in 2028
- Current Janitorial Agreements terminate in 2030

Policy Revision Recommendation

Certain Services

In lieu of disqualification, City would establish evaluation criterion in RFP process, including:

- Number of judgements or final decisions
- Cumulative dollar amount of judgements/decision
- Number of employees affected
- Size of company
- History of compliance

Example: Banking Services:

- Complexity and large capacity
- Collateralization mandated by state
- Numerous branches (i.e. retail, commercial, investment)

Q & A

Matt Loesch, Acting Public Works Director

Chris Hickey, Division Manager, PW Office of Equality Assurance