

Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Matt Loesch

**SUBJECT: WAGE THEFT PREVENTION
POLICY REVISIONS**

DATE: March 23, 2023

Approved



Date

3/24/23

SUPPLEMENTAL

REASON FOR SUPPLEMENTAL

To update recommendations and remove the clause (b) in the March 6, 2023 staff memorandum, as well as provide additional information and clarifications regarding the proposed revisions to the Council Policy 0-44, Wage Theft Prevention Policy.

RECOMMENDATION

Adopt a resolution approving amendments to Council Policy 0-44, Wage Theft Prevention Policy, revising mandatory disqualification from procurement, removing the exemption for City of San José public works projects, evaluating wage theft history and impact in lieu of disqualification for certain services, and exempting from mandatory disqualification future procurements for janitorial services or security guard services if the proposer can demonstrate the ability to comply with certain labor requirements including wages, hours, working conditions, and a grievance process to address wage claims, and make other clarifying changes.

BACKGROUND

A staff memorandum dated March 6, 2023 was forwarded to City Council for the March 28, 2023 Council meeting. The purpose of this supplemental memorandum is to replace the clause (b) recommendation in the March 6, 2023 staff memorandum, and provide additional information and clarifications regarding the proposed revisions to the Wage Theft Prevention Policy (Policy).

ANALYSIS

Requirement for Exemption from Mandatory Disqualification for Janitorial and Security Services

The agreements for janitorial services and security guard services with the City end in 2030 and 2029, respectively. Following approval of the proposed changes to the Wage Theft Policy by City Council, the Administration will evaluate the types of documentation that could be provided to demonstrate a potential contractor's commitment to wages, hours, working conditions and a grievance process. One way a potential contractor may demonstrate ability to comply with wage theft prevention is by citing to specific provisions in a collective bargaining agreement.

Bidders may find a source of guidance on other potential documentation in the types of documents that the Office of Equality Assurance would review as part of its investigation and enforcement of wage theft. Potential contractors must also demonstrate they have procedures and processes in place to provide a grievance process for wage theft claims. The labor addendum that is attached to janitorial and security guard service agreements and request for proposals template will be updated to reflect examples of the types of documentation that would need to be presented to the City in the response to the RFP and maintain through the term of the agreement.

Worker Retention in New Agreements

The City's Council Policy 3-3, Living Wage Policy¹ covers workers employed under janitorial and security guard contracts, which mandates that employers pay a specified wage rate and other worker protections requirements, such as Worker Retention. Employee retention requirements apply to all contracts over \$50,000 and provide for the continuation of a service currently provided through an incumbent contractor. Any new contractor shall offer employment to all qualified retention employees, unless the employee has been convicted of a crime that is related to the job or performance or the contractor can demonstrate that the employee presents a significant danger to customers, co-workers, or City staff. Retention employee may not be discharged ***without cause*** during the initial 90-day period, and qualified retention employee who receive satisfactory performance evaluations at the end of the initial 90-day period must be offered continued employment.

Certain Services

Certain services are critical to the operations of the City. For example, large banking institutions are required to serve the City, due to the complexity of the City banking programs and the collateralization mandated by state law, to safely execute over \$6 billion of City financial transactions on an annual basis. Qualified respondents to City banking services requests for proposals typically operate numerous retail branches employing hundreds of thousands of staff across the country, where disputes over wages or commissions may occur. Staff has identified a

¹ City of San José Council Policy 3-3, Living Wage Policy

<https://www.sanjoseca.gov/home/showpublisheddocument/20059/636755312058970000>

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low probability that a new request for proposals will identify a competitive pool of respondents where all would have clean wage theft records.

As an alternative to rejecting all proposals and extending current agreements, staff is recommending Policy revisions that would enable the City to compete in the market and secure the most qualified potential contractors. In lieu of disqualification, the City would establish an evaluation criterion to be used in the request for proposals process that will consider criteria such as (i) the number of judgments or final administrative decisions and cumulative dollar amount, (ii) the number of employees affected by the subject violations, (iii) the size of the company, and (iv) history of compliance with wage and hour laws. Potential contractors for these types of services would still be subject to all other requirements of the Policy.

/s/

MATT LOESCH

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For questions, please contact Christopher Hickey, Division Manager, Public Works Department, at Christopher.Hickey@sanjoseca.gov.