

**COUNTY OF SAN DIEGO, CALIFORNIA
BOARD OF SUPERVISORS POLICY**

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Purpose

To establish a Board of Supervisors policy that protects and enhances employment protections for Property Services contractors, including janitorial, landscaping, and security services contracts.

Background

The County has a proprietary interest in County-owned and operated properties. Since many of these contracted services involve workers who must regularly interact with the County employees and the public, the County also has an interest in ensuring high continuity and quality among workers employed by the County's Property Service contractors. This policy aims to ensure that the County contracts with a contractor that provides benefits, training, support, and other resources to their employees - rather than to try to rectify wage claims or other violations after an abuse has occurred. Implementation of these requirements will provide the County with assurances that contractors will ensure labor peace, comply with local, State, and Federal laws, and adhere to the County's commitment to its Live Well San Diego Initiative and the Framework for the Future.

Policy

It is the policy of the Board of Supervisors that, to the extent allowed by law, the following principles shall be incorporated into all Requests for Proposals (RFP) and resulting contracts for janitorial, landscaping, and security services contracts serving property that the County is responsible to maintain (Property Services Contracts). This policy shall apply to RFPs posted, and resulting contracts executed, after December 13, 2022, except that any amendments to this policy shall apply to RFPs posted, and resulting contracts executed, after the adoption of such amendment.

These contracts are defined as such:

Janitorial Services: Professional cleaning services including, but not limited to, office spaces.

Landscaping Maintenance: Activities for the care of natural landscaping, including, but not limited to, seasonal cleanups, mowing, plant fertilization, weed control, cultivation activities, tree maintenance and care (including pruning and trimming), tree removal, tree planting, and other landscape-related projects.

Security Services: Services to guard and patrol facilities and grounds as well as control access to property. May serve as deterrent for crimes and trespassers as well as record and report suspicious activities.

1. Labor Peace Agreements

- a. Rationale: Labor Peace Agreements are important to guarantee labor peace to protect the County's proprietary and economic interests.
- b. RFP Minimum Requirement: Prospective contractors ("Offerors") shall attest that they have, or will enter into, a Labor Peace Agreement with any Labor Organization that represents employees performing work under the contract upon being awarded a contract from the County, which should include provisions related to addressing labor disputes

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- and concerted activity.
- c. Contract Requirement: If the Offeror's employees are represented by a Labor Organization, within 90 days of being awarded a contract or contract renewal, the Labor Peace Agreement should be furnished.
 - d. Contract Requirement: If at any time after the award of the contract employees of the contractor performing work under the contract become represented by a Labor Organization, contractor shall furnish a Labor Peace Agreement within 90 days of the effective date of such Labor Organization representation.
 - e. Contract Requirement: Any Labor Peace Agreement shall include a binding and enforceable provision(s) prohibiting the Labor Organization and its members from engaging in work stoppages, boycotts, or any other economic interference in relation to services performed under the contract for the duration of the Labor Peace Agreement.
2. Collective Bargaining Agreements
- a. Rationale: A Collective Bargaining Agreement is a written legal contract between a contractor and a union representing the employees. This agreement helps empower employees to negotiate terms of employment, such as pay, benefits, hours, leave, job health, and safety policies.
 - b. RFP Minimum Requirements:
 - i. If an Offeror has an existing Collective Bargaining Agreement applicable to employees performing work under the contract, they shall provide that document as part of their RFP submittal.
 - ii. If an Offeror does not have a Collective Bargaining Agreement, they shall provide documentation of the following for employees performing work under the contract:
 1. Wages
 2. Benefits, including health and other benefits
 3. Training programs
 4. Employment conditions, including work days and hours, assignment of work schedules, meal and rest breaks, leaves of absence, work-related expenses, and pay days
 5. Supplies, uniforms, and personal protective equipment provided to employees
 6. Retirement
 7. Relevant historic records related to overall employment conditions
 8. Procedure for resolving employee complaints and other employment-related disputes
 9. Any other documentation that is deemed appropriate to understand the comprehensive suite of offerings
 - c. RFP Evaluation: Evaluation criteria for Offerors shall include the following:

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- i. the suite of benefits (e.g., wages, benefits, employment conditions) that are offered in comparison to the market. An Offeror who has a Collective Bargaining Agreement shall receive maximum credit for this evaluation criterion.
- ii. the extent of medical plan offerings to employees, including, but not limited to, consideration for plan deductible levels and employee contributions to monthly premium payments.

3. Wage Theft

- a. Rationale: The Department of Purchasing and Contracting (DPC) and the Office of Labor Standards and Enforcement (OLSE) are jointly implementing procedures to protect workers from wage theft.
- b. RFP Evaluation: One of the evaluation criteria for Offerors shall include past wage theft judgments. The County may determine that an Offeror is no longer eligible for award if the Offeror has four or more wage theft judgments issued by the California Labor Commissioner's Office or the United States Department of Labor within the three years preceding the due date of the RFP. Offerors with no such wage theft judgments within the last three years shall receive maximum points under this evaluation criterion. Before finding an Offeror to be ineligible for award under this section, the County will consider:
 - i. Whether the wage theft incident(s) was a good faith mistake and, if so, the error was promptly and voluntarily corrected when brought to the attention of the contractor;
 - ii. Whether the Offeror has a prior history or several instances of the issue are reported;
 - iii. How many employees the Offeror has in relation to the number of wage theft judgments;
 - iv. The severity of the wage theft judgments;
 - v. The number of impacted workers related to the wage theft judgments; and
 - vi. The egregiousness of the Offeror's conduct.
- c. Contract Requirement: Contractors will be required to participate in a wage theft fund. The County will set aside a portion of the contract, which will be paid out in full at the end of the contract term, provided there are no employee claims of wage theft against the contractor. The fund will be used to provide wages to employees who were not paid all wages owed in violation of the California Labor Code.
 - i. Upon a finding of wage theft by OLSE and appeal, or expired appeal period, the set aside funds will be used to pay the employee back wages owed and the cost recovery time to OLSE. In addition, a contractor may not retaliate, or threaten to retaliate against an employee for exercising their right to file a complaint with OLSE (or other labor enforcement agency) for participating in an investigation. A finding of retaliation by OLSE against a contractor as part of a wage theft complaint, may result in damages being paid to the employee from the contractors set aside retention funds.

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- ii. If a contractor is found to have committed wage theft, they may be precluded from award of future County contracts and/or considered for debarment, and the information may be considered in the County’s award of future contracts.

4. Wage Floor

- a. RFP Minimum Requirement: The RFP will establish a wage floor for the service contracts based on benchmarking done every five years. The wage floor shall be inclusive of the hourly wage, health and welfare benefits, paid days off, sick leave, and other benefits to ensure competitive salaries for those employees.
- b. Contract Requirement: The wage floor will increase for each year of the contract.

5. Training Programs and Sexual Harassment Prevention Training

- a. Contract Requirement: Within sixty days of contract award, and within sixty days of a new employee’s hire, the contractor shall furnish proof that all employees performing work under the contract have received and are up to date on Sexual Harassment and Sexual Assault training established by the State of California, Department of Industrial Relations (DIR). In addition, within sixty days of contract award, and within sixty days of a new employee’s hire, the contractor shall provide all employees an orientation on the following topics:
 - i. Potential consequences for perpetrators of workplace sexual harassment and assault;
 - ii. Information on representatives of the contractor and within OLSE to whom an employee can report cases of workplace sexual harassment and assault;
 - iii. Community and mental health resources locally available for survivors of workplace sexual harassment or assault; and
 - iv. Strategies to defend against sexual harassment or assault.
- b. Contract Requirement: The contractor shall provide updated training on the topics listed above to all employees performing work under the contract at least once per year. In addition, the contractor will provide documentation annually that the awarded contractor has complied with all the requirements of California Labor Code Sections 1420 -1434, “Property Service Workers Protection Act.”
- c. Contract Requirement: All of contractor’s employees and subcontractors performing work under the contract shall participate in an OLSE-provided annual training that covers the role of OLSE, worker rights, any changes to State/federal/ local laws, how to file a complaint with OLSE, and any other information deemed relevant.
- d. Contract Requirement: The contractor shall support each of their employees performing work under the contract to complete the “Green Janitor Education Program” at no cost or detriment to their employment. This program provides employees with the education and support necessary to implement sustainable procedures and materials that reduce energy use and water consumption.

6. Worker Retention

- a. Rationale: The County should seek to maintain continuity within the workforce when

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1. The Contracting Standards for Janitorial, Landscaping, and Security Services Contracts shall be incorporated into all applicable RFPs posted after December 13, 2022, and all resulting contracts.
2. Failure to meet these standards outlined in this Board Policy should be disqualifying for a contractor.
3. Role of OLSE in Contract Enforcement:
 - a. The Board of Supervisors established OLSE (May 4, 2021 [23]) and specifically set a framework that included OLSE finding additional ways the County could participate in enforcement of state and local laws and regulations impacting workers within the County's jurisdictional boundaries, including “development of protocols for denial, suspension, or revocation of licenses, permits *or County contracts of employers who repeatedly violate labor standards*” (emphasis added). Additionally, the framework required OLSE to “coordinate with other County departments and offices that monitor and enforce County contracting requirements and expenditure of County funds.”
 - b. In fulfilling the framework, OLSE shall, upon the approval of the Deputy Chief Administrative Officer/Chief Financial Officer, require existing contract enforcement measures for County vendor contractors who have been found by OLSE (or other labor enforcement entity) to violate a labor standard on a current contract, based upon on the following factors, including but not limited to:
 - i. Nature of the current violation
 - ii. The severity of the current violation
 - iii. Number of employees impacted by the labor standards violation
 - iv. Frequency of prior labor standards violations
 - v. Whether the contractor retaliated or threatened to retaliate against an employee making a complaint to OLSE.
4. OLSE shall complete an investigation and/or audit within thirty days of receiving a complaint to determine whether a breach of contract has occurred and shall submit the results, including proposed contract enforcement measures, to the Deputy Chief Administrative Officer/Chief Financial Officer for approval. At the discretion of the OLSE Director, the period to complete an investigation may be extended in extenuating circumstances.

Responsible Departments

1. Department of Purchasing and Contracting
2. Office of Labor Standards and Enforcement
3. Department of General Services
4. Department of Parks and Recreation

Sunset Date

This policy will be reviewed for continuance by 12-31-31.

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Board Action
12-13-22 (32)
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