

CITY OF MORGAN HILL

COUNCIL POLICIES AND PROCEDURES

CP-17-01

SUBJECT: WAGE THEFT PREVENTION

EFFECTIVE DATE JULY 26, 2017

ORIGINATING DEPARTMENT: CITY ATTORNEY'S OFFICE

BACKGROUND

Wage theft occurs when an employer fails to pay its workers the wages to which they are legally entitled. It is the crime of stealing earned wages from workers. There are numerous forms of wage theft involving violations of employment laws but all resulting in workers receiving less income than they are entitled to earn. Local and national studies on wage theft report that wage theft is a pervasive and chronic problem.

PURPOSE

To establish a Council Policy and Procedure to prevent wage theft on City contracts.

POLICY

It is the policy of the City of Morgan Hill that all parties contracting with the City must comply with all applicable federal, state and local wage and hour laws including but not limited to the Federal Fair Labor Standards Act ("FLSA") and the California Labor Code.

Bid or Proposal Disqualification Circumstances

A potential contractor that has submitted a formal or informal bid or proposal to provide supplies, materials, goods, and/or services to the City may be disqualified if the potential contractor has been found, by a court or by final administrative action of an investigatory government agency, to have violated applicable wage and hour laws on more than one (1) occasion or has one (1) unpaid wage judgment in the past five (5) years prior to the date of submission of a bid or proposal to provide supplies, materials, goods, and/or services.

Grounds for Contract Termination

A current contractor found by a court or by final administrative action of an investigatory government agency to have violated applicable wage and hour laws, in the five (5) years prior to or during the term of the contract with the City, may be in material breach of its contract with the City if the violation is not fully disclosed and/or satisfied per City contract requirements. Such breach may serve as a basis for contract termination and/or any other remedies available under law, including a stipulated remediation plan.

PROCEDURE

Mandatory Disclosure

As a part of any City solicitation for supplies, materials, goods, and/or services, a potential contractor shall fully complete a “Bid Certification” (“Certification”) that requires each potential contractor to disclose whether the contractor has been found by a court or final administrative action of an investigatory government agency to have violated federal, state, or local wage and hour laws within the past five (5) years from the date of the submitted bid or proposal. For each disclosed violation, the potential contractor shall provide a copy of (i) the court order and judgment and/or final administrative decision; and (ii) documents demonstrating either that the order/judgment has been satisfied, or if the order/judgment has not been fully satisfied, a written and signed description of potential contractor’s efforts to date to satisfy the order/judgment. The completed Certification shall be submitted by the potential contractor to the City as a part of its bid or proposal.

Disqualification

The City may disqualify a potential contractor based on the disclosed violation if the potential contractor has been found by a court or by final administrative action of an investigatory government agency to have violated applicable wage and hour laws on more than one (1) occasion or has one (1) unpaid wage judgment.

In evaluating whether to disqualify a potential contractor, the City should evaluate (i) the amount of the judgment or final administrative decision; (ii) the number of employees impacted by the prior violations; (iii) the size of the company and history of compliance with wage and hour laws; (iv) the impact to the City; and (v) other factors that may be appropriate.

Inaccurate or incomplete disclosures constitute a violation of the City’s Wage Theft Prevention Policy and may result in immediate disqualification from the City solicitation and contracting process or immediate termination of any contract with the City.

CONTRACT LANGUAGE AFTER SUCCESSFUL BID OR PROPOSAL

All City contracts subject to this Policy shall include the following provisions:

“Wage Theft Prevention

Compliance with Wage and Hour Laws: Contractor, and any subcontractor it employs to complete work under this Agreement, shall comply with all applicable federal, state, and local wage and hour laws. Applicable laws may include, but are not limited to, the Federal Fair Labor Standards Act and the California Labor Code.

Final Judgments, Decisions, and Orders: For purposes of this Section, a “final judgment, decision, or order” refers to one for which all appeals have been exhausted or the time to appeal has expired. Relevant investigatory government agencies include: the federal Department of Labor, the California Division of Labor Standards Enforcement, or any other governmental entity or division

tasked with the investigation and enforcement of wage and hour laws.

Prior Judgments against Contractor and/or its Subcontractors: BY SIGNING THIS AGREEMENT, CONTRACTOR AFFIRMS THAT IT HAS DISCLOSED ANY FINAL JUDGMENTS, DECISIONS, OR ORDERS FROM A COURT OR INVESTIGATORY GOVERNMENT AGENCY FINDING – IN THE FIVE (5) YEARS PRIOR TO EXECUTING THIS AGREEMENT – THAT CONTRACTOR OR ITS SUBCONTRACTORS(S) HAS VIOLATED ANY APPLICABLE WAGE AND HOUR LAWS. CONTRACTOR FURTHER AFFIRMS THAT IT OR ITS SUBCONTRACTOR(S) HAS SATISFIED AND COMPLIED WITH – OR HAS REACHED AGREEMENT WITH THE CITY REGARDING THE MANNER IN WHICH IT WILL SATISFY – ANY SUCH JUDGMENTS, DECISIONS, OR ORDERS.

Judgments or Decisions During Term of Contract: If at any time during the term of this Agreement, a court or investigatory government agency issues a final judgment, decision, or order finding that Contractor or a subcontractor it employs to perform work under this Agreement has violated any applicable wage and hour law, or Contractor learns of such a judgment, decision, or order that was not previously disclosed, Contractor shall inform the City Attorney, no more than fifteen (15) days after the judgment, decision, or order becomes final or of learning of the final judgment, decision, or order. Contractor and its subcontractors shall promptly satisfy and comply with any such judgment, decision, or order, and shall provide the City Attorney with documentary evidence of compliance with the final judgment, decision, or order within five (5) days of satisfying the final judgment, decision, or order. The City reserves the right to require Contractor to enter into an agreement with the City regarding the manner in which any such final judgment, decision, or order will be satisfied.

City's Right to Withhold Payment: Where Contractor or any subcontractor it employs to perform work under this Agreement has been found in violation of any applicable wage and hour law by a final judgment, decision, or order of a court or government agency, the City reserves the right to withhold payment to Contractor until such judgment, decision, or order has been satisfied in full.

Material Breach: Failure to comply with any part of this Section constitutes a material breach of this Agreement. Such breach may serve as a basis for immediate termination of this Agreement and/or any other remedies available under this Agreement and/or law.

Notice to City Related to Wage Theft Prevention: Notice provided to the City Attorney as required under this Section shall be addressed to: City Attorney, City of Morgan Hill, 17575 Peak Avenue, Morgan Hill, CA 95037. The Notice provisions of this Section are separate from any other notice provisions in this Agreement and, accordingly, only notice provided to the above address satisfies the notice requirements in this Section.”

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In the event the contractor or subcontractor is in violation of the contract provisions above, the City should weigh the same factors set forth in the “Disqualification” section of this Policy to determine whether the City should terminate the contract or pursue some other remedy. If the violation is based on an order or judgment against a subcontractor, the City may allow the substitution of subcontractors in lieu of disqualification.

This Policy shall remain in effect until modified by the City Council.

APPROVED:

STEVE TATE, MAYOR