

# **CITY OF LOS ANGELES**



## **RULES AND REGULATIONS**

### **IMPLEMENTING**

### **THE SERVICE CONTRACTOR**

### **WORKER RETENTION ORDINANCE**

REFLECTS ALL REVISIONS THROUGH NOVEMBER 2, 2016

Department of Public Works  
Bureau of Contract Administration  
Office of Contract Compliance  
1149 S. Broadway, Suite 300  
Los Angeles, CA 90015  
(213) 847-2625  
(213) 847-2777 (Fax)

**RULES AND REGULATIONS IMPLEMENTING  
THE SERVICE CONTRACTOR WORKER RETENTION ORDINANCE**

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## **RULES AND REGULATIONS IMPLEMENTING THE SERVICE CONTRACTOR WORKER RETENTION ORDINANCE**

The Department of Public Works, Bureau of Contract Administration, Office of Contract Compliance ("OCC") promulgates these Rules and Regulations as the Designated Administrative Agency ("DAA") pursuant to Section 10.36.7 of the Los Angeles Administrative Code ("LAAC"). Each awarding authority shall cooperate to the fullest extent with the OCC in the administration of the Service Contractor Worker Retention Ordinance ("SCWRO"). The OCC may also amend or revise these SCWRO Rules and Regulations from time to time, consistent with applicable law.

### **DEFINITIONS**

For purposes of these Rules and Regulations, the definitions set forth in LAAC Section 10.36.1 of the LAAC are incorporated herein. In addition, the following definitions shall apply in these Rules and Regulations.

**"Employed"** as used in LAAC Section 10.36.1(f) for purposes of applying the provisions of the SCWRO means that an employee works under the authority of the service contract.

**"Employee"** for purposes of applying the provisions of the SCWRO includes only those employees of a contractor or subcontractor who work on or under the authority of a City service contract and who meets all the following requirements: (1) earns no more than twice the hourly wage without health benefits available under the Living Wage Ordinance (LAAC Section 10.37 et seq.) for work performed on or under the authority of the service contract; (2) has been employed with the contractor or subcontractor for the preceding 12 months; and (3) whose primary place of employment is in the City on or under the authority of the service contract.

**"Managerial Employee"** or **"Supervisory Employee"** as used in LAAC Section 10.36.1(f) includes only those employees who have the authority to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other subordinate employees, or the responsibility to direct them, adjust their grievances, or effectively to recommend such action, if, in connection with the foregoing, the exercise of such authority is not merely of a routine or clerical nature, but requires the use of independent judgement.

**"OCC"** means the Department of Public Works, Bureau of Contract Administration, Office of Contract Compliance.

**"Seasonal Employees"** for purposes of the application of the SCWRO, a seasonal employee will be considered to have been employed for the preceding 12-months if the employee was employed the entire season or seasons within such 12-month period. The awarding department shall define the term "season." The 90-day transition employment period shall commence on the first day of the season and run 90 consecutive calendar days.

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**"Service Contract"** means a contract in excess of \$25,000 and three months or longer let to a contractor by the City or City financial assistance recipient primarily for the furnishing of services to or for the City or financial assistance recipient.

**"Subcontractor"** means a contractor who contract with the City's contractors to perform the services the contractor is required to perform to or for the City. Vendors of a contractor are not regarded as "subcontractors" for this purpose.

**"Successor Contract"** means a contract to provide services that are substantially similar to the services provided by a prior, recently terminated contract. A service contract will be considered a "recently terminated" contract subject to the SCWRO if service contract has completed, or terminated early in whole or part, or amended that reduces services in whole or in part and the awarding department planned to put into place, or contemplated putting into place, another contract to provide for services that are substantially similar to those provided under the contract being terminated. The resulting contract to provide those substantially similar services is subject to the SCWRO as a successor contract.

If there is doubt as to whether the services to be performed under a new contract are substantially similar to those performed under a recently terminated contract, the OCC shall determine the issue upon considering the City's proprietary interest in the continuity of services.

The term "successor contract" includes a service contract let to a contractor to perform work that was previously performed by employees of the City or a City financial assistance recipient.

**"Successor Contractor"** means a contractor that is awarded a contract to perform services that are substantially similar to the services performed under a recently terminated contract.

**"Terminated Contractor" means a contractor of a recently terminated contract.** The City or City financial assistance recipient is considered a "terminated contractor" if the City or City financial assistance recipient enters into a service contract with a contractor and the work to be performed by the contractor is work that was previously performed by the employees of the City or a City financial assistance recipient.

A "terminated contractor" also includes a subcontractor to a service contractor if the contractor is subject to the SCWRO and the service contract between the contractor and its subcontractor is terminated prior to the end of the termination of the City service contract.

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**REGULATION #1: APPLICABILITY**

**a. Expenditures Covered by the SCWRO**

These Rules and Regulations shall apply to City expenditures of funds entirely within the City's control, and to state and federal grant funds to the extent allowed by law.

**b. Contracts Executed and City Financial Assistance Provided after May 18, 1996**

These Rules and Regulations shall apply to service contracts executed and to City financial assistance provided after May 18, 1996.

**c. Contracts Amended after May 18, 1996**

A service contract not originally subject to the SCWRO may become subject to the Ordinance and these Rules and Regulation if: (1) the contract is amended after May 18, 1996; (2) the total amount of the contract, inclusive of the proposed amendment, would exceed \$25,000; and (3) the length of the contract, inclusive of the proposed amendment, is at least three months or longer. The contract becomes subject to the SCWRO and these Rules and Regulations at the time the proposed contract amendment is executed.

**d. Applicability to Service Contractors of City Financial Assistance Recipients**

A CFAR is subject to the SCWRO if the CFAR receives financial assistance from the City for economic development or job growth, and the financial assistance totals at least \$100,000 in any 12-month period.

A City financial assistance recipient (CFAR) that is subject to the SCWRO shall require all its contractors and subcontractors to comply with the SCWRO in all its service contracts, including those service contracts not paid for with City funds. The CFAR shall require all its contractors and subcontractors to comply with the Ordinance so long as the services provided by the CFAR's contractor or subcontractor are performed within the City limits, and the CFAR is still in possession of any City financial assistance. The CFAR shall require its service contractors to comply with the SCWRO until the CFAR has completely expended all its City financial assistance funds.

A CFAR may apply for exemption from the SCWRO under 10.36.1(c) of the Ordinance if it submits an application for exemption to the awarding department. The awarding department shall review the application, make a recommendation, and submit the application and recommendation to the OCC for approval. No CFAR shall be considered to be exempt from the SCWRO unless the OCC has approved the application for exemption.

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**REGULATION #2: CONTRACT AND AMENDMENT EXECUTION PROCESS**

**a. Service Contracts Subject to the SCWRO**

Service contracts in excess of \$25,000 and with a term of at least three months shall incorporate the language obligating the contractor to comply with the requirements of the SCWRO. No service contract subject to the SCWRO may be executed unless the service contract incorporates the provisions of the SCWRO.

**b. Service Contracts Subject to the SCWRO as a Result of an Amendment**

Service contracts that become subject to the provisions of the SCWRO because of an amendment shall incorporate language obligating the contractor to comply with the requirements of the SCWRO. No such amendment to a service contract may be executed unless the amendment incorporates the provisions of the SCWRO.

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**REGULATION #3: TERMINATION OF SERVICE CONTRACT**

If the awarding authority proceeds to terminate a service contract that is subject to the SCWRO and plans to execute a successor service contract with a successor contractor, the awarding authority shall:

- a. Notify the OCC of the awarding authority's intent to terminate the service contract, who the successor contractor will be, if known, and when the successor service contract will begin or is expected to begin.
- b. Inform the terminated contractor that it is subject to the SCWRO and require the terminated contractor to provide the awarding authority within 10 days of such notice a listing of the terminated contractor's employees who are covered by the SCWRO.
- c. The awarding authority may refer the terminated contractor to the OCC for additional information.

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### **REGULATION #4: COMPLAINT PROCESS**

Complaints to the OCC shall be processed as follows:

#### **a. Complaints filed by Awarding Authorities**

The awarding authority may request the OCC to conduct an investigation on its behalf. Such request shall take precedence over any complaints filed by employees alleging violations, as employees have an alternative recourse in seeking remedies (See SCWRO Section 10.36.3 (a))

#### **b. Employee Complaints**

An employee making a complaint regarding an employer's compliance with the SCWRO must submit the complaint to the OCC in writing.

Upon receipt of a written employee complaint, the OCC may, in its discretion, initiate an investigation. Upon conclusion of the investigation, the OCC shall notify the employees and the awarding authority of the results. If the OCC determines that the employer is in violation of the SCWRO, the OCC shall proceed as provided for in SCWRO Section 10.36.3(d).

#### **c. Submission of Additional Documentation After Completion of an Investigation**

Upon completion of an investigation, the OCC will notify the employee, the employer and the awarding authority of the results of the investigation with a Notice of Findings. The Notice of Findings will be sent certified mail to the employee and employer. The employee and the employer may request that the OCC reconsider its findings by submitting a written request and additional documentation within 15 calendar days of the date of receipt of the OCC Notice of Findings.

1. If the OCC does not receive a written request for reconsideration within the 15 calendar days, the OCC Notice of Findings will become final.
2. If the OCC receives the written request for reconsideration within the 15 calendar days, the OCC shall notify the employer, the employee and the awarding authority that a written request for reconsideration has been received, and that the OCC will re-evaluate the matter. Upon completion, the OCC shall notify all aforementioned parties of the result of the OCC reconsideration. The Final Notice of Findings resulting from the reconsideration is final, and no further reconsideration shall be available. If the OCC's final findings are that the employer violated the SCWRO, the OCC will give notice to the employer, the employee, and the awarding authority of such determination.



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**d. Confidentiality of Information During Investigation**

Consistent with the Public Records Act, information and records obtained by the OCC in the course of its complaint investigations, including the identity of the complainants and any witnesses, shall be considered confidential and exempt from public disclosure during the course of the investigation.

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**REGULATION #5: PRIME CONTRACTORS' RESPONSIBILITY FOR  
SUBCONTRACTORS**

Prime contractors shall include the SCWRO's requirements in contracts executed with subcontractors, be responsible for ensuring that their subcontractors comply with the SCWRO and may be issued a determination that the prime contractor is out of compliance with the SCWRO for any of its subcontractors' violations.

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**REGULATION #6: PENALTIES FOR TERMINATED CONTRACTOR'S FAILURE TO  
COMPLY**

If a terminated contractor fails to provide the City or the successor contractor with the names of employees covered by the SCWRO as required by the Ordinance and these Rules and Regulations, the City may withhold any final payment(s) due to the terminate the contract, and pursue any legal remedies that may be available.