



Metro

Los Angeles County
Metropolitan Transportation Authority

One Gateway Plaza
Los Angeles, CA 90012-2952

213.922.2000
metro.net

REVISED
EXECUTIVE MANGEMENT & AUDIT COMMITTEE
APRIL 17, 2014

**SUBJECT: LIVING WAGE POLICY & SERVICE CONTRACT WORKER
RETENTION POLICY**

**ACTION: APPROVE ADOPTION OF LIVING WAGE & SERVICE CONTRACT
WORKER RETENTION POLICY**

RECOMMENDATION

- A. Adopt a Living Wage Policy as specified in Attachment A
- B. Adopt a Service Contract Worker Retention Policy as specified in Attachment A

ISSUE

On December 5, 2013, the Board introduced a Motion by Directors Garcetti, Molina, Dupont-Walker, and Krekorian for staff to evaluate and commit to providing an equitable wage structure for workers on all Metro landscaping and irrigation maintenance service contracts. (Attachment B) By implementing a Living Wage Policy Metro will ensure minimum levels of compensation, which will provide employees a higher standard of living, and improve the level of services provided to the public.

The Motion also requested staff conduct an analysis on adopting and implementing a service contract worker retention policy, which will retain, for transition purposes, core employees of the previously employed contractor for a period of no more than 60 days.

DISCUSSION

Living Wage Policy

Currently, Metro does not have a Living Wage Policy because landscape and irrigation maintenance contracts are subject to State and/or Federal prevailing wages. The State and/or Federal prevailing wage determinations are identified for each project based on the state and county that the project is located. All of Metro's service contracts are located within Los Angeles County. In addition, staff conducted research to identify other major transit properties that have a living wage program. The properties surveyed included:

- Bay Area Transit Authority (BART)
- Chicago Transit Authority (CTA)
- Dallas Area Rapid Transit (DART)
- Metropolitan Atlanta Rapid Transit Authority (MARTA)
- Metropolitan Transportation Authority – New York (MTA-NY)
- Orange County Transportation Authority (OCTA)
- Washington Metropolitan Area Transit Authority (WMATA)

Out of the agencies surveyed, WMATA was the only agency with a living wage policy. WMATA's living wage policy is applicable to service contracts awarded in excess of \$100,000 with rates ranging from \$12.50 to \$13.65 per hour, which is less than LAWA's rates proposed for Metro's policy.

Staff reviewed the City of Los Angeles' Living Wage Ordinance, the Los Angeles World Airport Living Wage Ordinance and the County of Los Angeles' Living Wage Program to determine the feasibility of developing and implementing a similar program at Metro.

After review of rates paid by the agencies surveyed, and the types of contracts awarded, staff found that LAWA had the highest wage rate. The Living Wage Ordinance/Programs of the agencies surveyed in Los Angeles County, applies only to service contracts. Metro staff proposes to use LAWA's higher wage rates and take the best elements of all three agencies surveyed to develop Metro's policy.

	Current Hourly Rate	Health Benefits	Total Hourly Rate
City of Los Angeles Living Wage Ordinance	10.91	1.25	12.16
Los Angeles World Airport Living Wage Ordinance	10.91	4.76	15.67
Los Angeles County Living Wage Program	9.64	2.20	11.84

DEOD met with County Counsel on the appropriate type of policy, program or ordinance that would be feasible to develop Metro's living wage policy. County Counsel concurs that it would be feasible for Metro to implement a living wage policy verses an ordinance that will allow for administrative changes, if needed.

The types of contracts that would be subject to the living wage policy are:

- Weed Abatement and Debris Removal
- Asphalt and Concrete Repair
- Tree Trimming

- Landscaping
- Trash Collection
- Pest Control
- Freeway Beautification
- Security Guard Services (not prevailing wages)

Service Contract Worker Retention Policy

Staff reviewed the City of Los Angeles', Los Angeles World Airports, worker retention programs to determine the feasibility of developing a worker retention policy for Metro. The County of Los Angeles does not have a Worker Retention Program. The aforementioned agencies all have a worker retention period of 90 days. Though the Board requested a retention period of 60 days, based on the analysis of the above agencies and similar types of contracts awarded by Metro, staff is recommending a worker retention period of no more than 90 days.

Adoption of Living Wages on Orange Line Contract

Staff has researched the Board's request to apply the City of Los Angeles' living wage rates on the Orange Line Landscape and Irrigation Maintenance contract number OP3367-3127R. The Orange Line contract was cancelled due to safety reasons. Staff will ensure that the Living Wage language and rates are included in the revised request for proposal for this project.

DETERMINATION OF SAFETY IMPACT

Approval of this item will have no direct impact on the safety of Metro's employees and customers.

FINANCIAL IMPACT

Motion # 36 was introduced by the Board based on the low hourly wage rate of the Landscape Maintenance Laborer classification (state classification). The current hourly wage rate for Landscape Maintenance Labor, in the Department of Industrial Relations (DIR) wage determination, for Los Angeles County is \$9.15. Upon Board approval of the Living Wage Policy, the living wage rate of \$15.67 will be applicable; which is a \$6.52 increase per hour for each employee working under the Landscape Maintenance Laborer classification (the increased amount listed does not include overhead costs).

ALTERNATIVES CONSIDERED

1. Work with the Department of Labor (DOL) to assign a trade classification and hourly rate when the wage determination applicable to the project does not show a

classification. This is not recommended because this option requires the awarding body to submit a request in writing to the DOL to review the scope of work and assign a classification and hourly rate. Requests must be submitted for a classification for each contract awarded. Responses from the DOL often take upward of 6 months. This will have a negative impact on procurement schedules due to the delay associated with the DOL process.

2. Delay the adoption of a Service Contract Worker Retention Policy. This is not recommended because it would not allow for transition of employees, thereby causing loss of core employees that were employed by the previous contractor.

NEXT STEPS

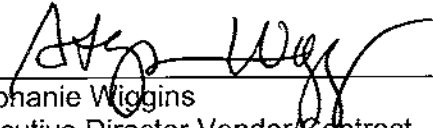
Upon approval staff will implement the Living Wage Policy and the Service Contract Worker Retention Policy effective July 1, 2014.

Upon Board approval, the Living Wage Policy and Rates will be applicable on new service contracts over \$25,000, effective July 1, 2014.


ATTACHMENTS

- A. Metro Living Wage Policy and Metro Service Contract Worker Retention Policy
- B. Motion #36 by Directors Garcetti, Molina, Dupont-Walker, & Krekorian

Prepared by: Wendy L. White, Principal Labor Compliance Representative
(213) 922-2648



Stephanie Wiggins
Executive Director Vendor/Contract
Management



Arthur T. Leahy
Chief Executive Officer

REVISED

ATTACHMENT A

LIVING WAGE AND SERVICE CONTRACT WORKER RETENTION POLICY

I. BACKGROUND

On December 5, 2013, the Los Angeles County Metropolitan Transportation Authority (Metro) board introduced a motion for staff to evaluate and commit to providing an equitable wage structure for workers on all Metro landscaping and irrigation maintenance services contracts. By implementing a Living Wage Policy Metro will ensure minimum levels of compensation, which will provide workers a higher standard of living, and improve the level of services provided to the public.

The Motion also requested staff conduct an analysis on adopting and implementing a service contract worker retention policy which will retain, for transition purposes, employees of the previously employed contractor for a period of no more than ninety (90) days.

II. LIVING WAGE POLICY

A. Payment of Minimum Compensation to Employees

It is the policy of Metro that persons doing work on, for or on behalf of Metro be paid a living wage, be provided with or are able to afford health benefits, have reasonable time off, not be subject to lay off merely because Metro changes contractors and should work in an environment of labor peace.

Metro has adopted living wage rates adopted by the Los Angeles World Airports (LAWA). These rates will be reviewed each fiscal year, no later than the July 5th to determine if any adjustment should be made based on any change as of June 30th of the previous fiscal year.

If the contract is subject to a federal or state prevailing wage requirement, the highest of the three wage rates shall apply. Proof of the provision of benefits must be submitted to Metro with the executed contract.

B. Compensated Time Off to Employees

The contractor or subcontractor shall provide twelve (12) days of compensated time off per year for full time employees, and six (6) days of compensated time off for part time employees, who meet the criteria set forth in this policy as a covered employee. Paid holidays, paid sick days, paid vacation and paid personal days shall count toward the required twelve (12) or six (6) days.

III. SERVICE CONTRACT WORKER RETENTION POLICY

1. Application

The employee retention requirements under this policy will apply to contracts (subject to this policy) which are greater than \$25,000 and provide for the continuation of a service currently provided by another contractor, including the following contracts:

- a. Weed Abatement and Debris Removal
- b. Asphalt and Concrete Repair
- c. Tree Trimming
- d. Landscaping
- e. Trash Collection
- f. Freeway Beautification
- g. Security Guard Services (not subject to prevailing wages)
- h. Any other service contract determined by Metro to meet the intent of this policy

2. Retention Employee

Any person employed by the predecessor contractor or any subcontractor to the predecessor contractor who:

- a. Provides direct labor or service on a Metro contract
- b. Is not an "exempt" employee under the Fair Labor Standards Act
- c. Has been employed for at least the twelve (12) month period prior to the date of the new contract by the predecessor service contractor or subcontractor and is paid less than \$15.00 per hour

3. Employment

Employment shall be offered to all qualified retention employees.

- a. The new service contractor or subcontractor may deem a retention employee not to be qualified only if:
 - i. The employee has been convicted of a crime that is related to the job or to his or her job performance
 - ii. The contractor can demonstrate to Metro that the employee presents
 - iii. a significant danger to customers, co-workers, or Metro staff

- b. The new service contractor or subcontractor may treat any of its current employees as retention employees for purposes of this policy who, based on payroll records or other reliable evidence can be shown to the satisfaction of Metro:
 - i. Have been employed for at least the twelve (12) month period prior to the date of the new contract by the contractor or subcontractor
 - ii. Would otherwise need to be terminated as a result of this program
- c. In the event that the service contractor or subcontractor does not have enough positions available for all qualified retention employees and its current eligible retention employees, the service contractor or subcontractor will hire the predecessor contractor's qualified retention employees and retain its current employees who are eligible for retention under this Policy based on seniority within each employment classification.

For any positions that become available during the initial ninety (90) day period of the new contract, the service contractor or subcontractor will hire qualified retention employees and rehire its current employees who are eligible for retention under this Policy based on seniority within each employment classification.

IV. RETENTION

Qualified employees of the predecessor contractor may not be discharged without cause during the initial ninety (90) day period of their employment under the new contract.

Each such qualified retention employee who receives a satisfactory performance evaluation at the end of the initial ninety (90) day period of employment will be offered continued employment under terms and conditions established by the contractor or subcontractor for all of its employees.

V. THIRD TIER REVIEW

With respect to requests for proposals regarding contracts identified in Section III (1) all proposers shall be required to undergo what is commonly referred to as a Employee Retention Plan. This is the process under which Metro considers the proposer's history as an employer and working condition commitments in evaluating the proposals. All proposers will be required to address the following in their Employee Retention Plan:

1. Compensated Days Off

The proposal shall describe the compensated days off per year, including holidays, sick leave, vacation and personal leave.

2. Employee Retention Requirements

The proposer will be required to provide requested information and documentation with regard to staffing needs under the contract and how many, if any, of its current employees would need to be considered for retention purposes.

3. Covered Employees

Any person employed by the contractor or any subcontractor, notwithstanding the location of the person, who:

- a. Is not a person who provides volunteer services, that are uncompensated except for reimbursement of expenses such as meals, parking or transportation;
- b. Expends at least half of his or her time on work for Metro;
- c. Is at least eighteen (18) years of age

VI. ADMINISTRATION

Metro's Diversity & Economic Opportunity Department shall monitor compliance, including the investigation of claimed violations, and may promulgate additional regulations consistent with this Policy.

VII. REPORTS

The Labor Compliance Administrator of the Diversity & Economic Opportunity Department shall file an annual report on compliance with the Metro Board.

VIII. PROPOSAL AND CONTRACT LANGUAGE

All proposals and Metro contracts subject to this policy shall contain the following paragraph or substantially equivalent language:

1. Living Wage Policy

The contract is subject to Metro's Living Wage Policy and any implementing regulations. The Policy requires among other things, that unless specific exemptions apply, all employers, as defined, under service contracts shall provide payment of a minimum level of compensation to employees, which include the cost of health benefits and a minimum number of days of compensated time off. Failure to provide the living wage compensation and compensated time off may result in termination of the contract or recommendation for debarment from future

contracts. The service or labor contract shall include the employee retention requirement set forth in this Policy, if applicable.

2. Service Contractor Worker Retention Policy

This Contract may be subject to the Service Contractor Worker Retention Policy ("SCWRP") which is incorporated herein by reference. If applicable, Contractor must also comply with the SCWRP which requires that, unless specific exemptions apply, all employers under contracts that are primarily for the furnishing of services to or for the Los Angeles County Metropolitan Transportation Authority (Metro) and that involve an expenditure or receipt in excess of Twenty-Five Thousand Dollars (\$25,000) and a contract term of at least three (3) months, shall provide retention by a successor contractor for a ninety-day (90-day) transition period of the employees who have been employed for the preceding twelve (12) months or more by the terminated contractor or subcontractor, if any, as provided for in the SCWRP. Metro has the authority to terminate this Contract and otherwise pursue legal remedies that may be available if Metro determines that the subject contractor violated the provisions of the SCWRP.

IX. RETENTION PROGRAM

To the extent Metro is able to obtain the information, Metro will provide the service contractor or subcontractor with a list of names, addresses, dates of hire and employment classifications for all covered employee of the outgoing service contractor or subcontractor who are interested in continued employment.

Contracts entered into after the adoption of this Policy shall obligate the contractor or subcontractor to provide names of all qualified retention employees at the end of the contract.

X. ENFORCEMENT

The service contract agreement shall provide that if a violation of any provision of this Policy occurs and is not corrected after written notice, Metro may, at its option, take any or all of the following actions:

1. Suspend and/or terminate the contract agreement for cause;
2. Require the employer to pay any amounts underpaid in violation of the required payments and Metro's administrative costs and liquidated damages.
3. Debar the contractor or subcontractor from future Metro contracts.

XI. DEFINITIONS

- Awarding Authority means that subordinate or person of Los Angeles County Metropolitan Transportation Authority - Metro (such as a department) that awards or is otherwise responsible for the administration of a service contract.
- Contractor means any person who enters into a service contract with Metro
- Employee means any person -- who is not a managerial, supervisory, or confidential employee and who is not required to possess an occupational license – who is employed (1) as a service employee of a contractor or subcontractor on or under the authority of one or more service contracts and who expends any of his or her time thereon, including but not limited to: weed abatement, debris removal, asphalt and concrete repair, tree trimming, landscaping, trash collection, pest control and freeway beautification.
- Employee Service Contractor Worker Retention Policy for purposes of applying the provisions of the Service Contractor Worker Retention Policy includes only those employees of a contractor or subcontractor who work on or under the authority of a Metro service contract and who meets all the following requirements: (1) earns under \$15 per hour 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 under the authority of the service contract.
- Person means any individual, proprietorship, partnership, joint venture, corporation, limited liability company, trust, association, or other entity that may employ individuals or enter into contacts.
- Service Contract means a contract in excess of \$25,000 and in duration of three months or longer awarded to a contractor by Metro, primarily for the furnishing of services to or for Metro.
- Subcontractor means any person not an employee that enters into a contract (and that employs employees for such purpose) with a contractor or subcontractor to assist the contractor in performing a service contract. Thus, vendors of a service 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 SCWRP if, at the time the contract is being terminated, 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 SCWRP as a successor contract. If there is doubt to whether the services to be performed under a new contract are substantially similar to those performed under a recently terminated contract, the DEOD, Procurement and Project Manager shall determine the issue considering Metro proprietary interest in the continuity of services.

- Successor Contactor means a contactor that is awarded a contract to perform services that are substantially similar to the services performed under a recently terminated or completed contact.
- Terminated Contractor a service contractor whose service contract has been recently terminated. It also includes a subcontractor to a service contractor if the contactor is subject to the SCWRP and the service contract between the contractor and its subcontractor is terminated prior to the end of the termination of the Metro service contract.
- Willful Violations means that the employer knew of his, her, or its obligations under the article and deliberately failed or refused to comply with its provisions.

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ATTACHMENT B

MOTION BY:

**MAYOR ERIC GARCETTI, SUPERVISOR GLORIA MOLINA &
DIRECTOR JACQUELYN DUPONT-WALKER**

Item 36.1 – Landscape & Irrigation Maintenance Services –

Living Wage Policy

MTA contracts out landscaping and irrigation services for almost all bus and rail facilities and properties.

Much of this work requires a skilled workforce that are properly trained to perform quality landscaping and irrigation services.

Current MTA practice and contracting policy contracts out landscape and irrigation maintenance services.

The MTA needs to evaluate and commit to providing an equitable wage structure for the workforce that provides these type of services.

Both the City and County of Los Angeles are committed to providing a to their contract employees.

The current City of Los Angeles Living Wage Ordinance requires that employees earn a minimum hourly wage of \$10.91, plus an additional \$1.25 in health benefits or cash, as well as access to paid and unpaid time off.

These elevated minimum levels of compensation provide employees with a higher standard of living, and improve the level of services provided to the public.

MTA does not have an adopted living wage ordinance because the agency's service contracts are subject to state prevailing wages.

While the vast majority of contract workers covered by prevailing wage earn well above the County and the City's living wage rates, employees

working under the classification of Landscape Maintenance Laborer earn less.

These workers earn a minimum hourly rate of \$9.145 in accordance with the California Director of Industrial Relations' General Prevailing Wage Determination.

The MTA should also explore opportunities to retain high skilled workers similar to the City of Los Angeles's "Living Wage and Service Contractor Worker Retention" requirements.

WE THEREFORE MOVE THAT THE MTA CEO:

1. Report back on the feasibility of adopting a living wage ordinance for MTA and provide an analysis that includes a review of which contracts would be subject to the living wage ordinance.
2. Consider and provide recommendations on a service contract worker retention program which retains, for transition purposes, core employees of the previously employed contractor for a period of no more than days.
3. Apply the City of Los Angeles' living wage rates to the Orange Line landscape maintenance contract before us today.
4. Report back at the March 2014 Board meeting on all the items listed above.

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