

**LOS ANGELES COUNTY
METROPOLITAN TRANSPORTATION AUTHORITY**

**LIVING WAGE
SERVICE CONTRACTOR WORKER RETENTION
POLICY MANUAL**

EFFECTIVE 01.01.2019



LIVING WAGE / SERVICE CONTRACT WORKER RETENTION POLICY

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1.0 GENERAL PROVISIONS

1.1 METRO'S LIVING WAGE / SERVICE CONTRACT WORKER RETENTION POLICY

I. BACKGROUND

On December 5, 2013, the Los Angeles County Metropolitan Transportation Authority (Metro) board approved a motion for staff to evaluate and commit to providing an equitable wage structure for workers on all Metro's 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.

The Motion also requested staff to 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 no less than ninety (90) days.

II. POLICY APPLICABILITY

1. Contracts Subject to the Living Wage / Service Contract Worker Retention Policy

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

The Living Wage / Service Contract Worker Retention Policy will apply to contracts which are equal to or greater than \$25,000, and run longer than one year, including the following contracts:

1. Asphalt and Concrete Repair
2. Facility and Building Maintenance
3. Food Services
4. Janitorial and Custodial
5. Landscaping
6. Laundry Services
7. Moving Services
8. Office and Clerical (copier maintenance, facsimile maintenance, courier mailing, photographic, printing, collections)
9. Parking Lot Management

10. Pest Control
11. Security
12. Street Sweeping
13. Towing
14. Trash Collection
15. Tree Trimming
16. Weed Abatement and Debris Removal
17. Any other Service or labor determined by the Metro Board of Directors or Executive Management to meet the intent of this Policy

2 Covered Employees

Covered employees include individuals employed by the prime or subcontractor(s) that meet the following requirements:

- a. Provides direct labor or service on a Metro contract. Employee must expend at least half of his or her time on work for Metro.
- b. Is not a person who provides volunteer services that are uncompensated except for reimbursement of expenses, such as meals, parking or transportation.

III. THIRD TIER REVIEW

All contractors hired on Metro LWP/SCWRP projects shall be required to provide the following information before the commencement of work:

1. Compensated Days Off
The contractor shall describe the compensated days off per year, including holidays, sick leave, vacation and personal leave.
2. Living Wage Documents
Documents that are outlined in the Living Wage Policy portion of this manual.
3. Service Contract Worker Documents
Documents that are outlined in the Service Contract Worker Retention Policy portion of this manual.

IV. 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.

V. REPORTS

The Labor Wage and Retention Programs unit of the Diversity & Economic Opportunity Department shall provide reports on LW/SCWRP compliance with the Metro Board, as requested.

VI. PROPOSAL AND CONTRACT LANGUAGE

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

1. Living Wage Policy

This 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 Contractors, as defined in Section 1.2 of the LW/SCWRP manual, 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 Contractors 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 one year, 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.

VII. ENFORCEMENT

The service contract agreement shall provide that if a violation of any provision of this Policy occurs and is not corrected within ten business (10) days 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 Contractor to pay any amounts underpaid in violation of the required payments and Metro's administrative costs and liquidated damages, if any.
3. Debar the Contractor or Subcontractor from future Metro contracts for three (3) years.

1.2 DEFINITIONS

- **Contractor** – Any person who enters into a service contract with Metro.
- **DEOD** – The acronym for the Diversity and Economic Opportunity Department. This is the department that includes the Labor, Wage and Retention Unit (LWRP).
- **Employee** – Any person — who is not a managerial, supervisory, or confidential employee and who is not required to possess an occupational license — who is employed 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.
 - **Covered Employee** - Provides direct labor or service on a Metro contract. Employee must expend at least half of his or her time on work for Metro.
 - **Non Covered Employee** - Employee who provides labor or service on a Metro contract for less than 50% of their total working hours.
 - **Employee (Service Contractor Worker Retention Policy)** – An employee who has been employed with the Contractor or Subcontractor for the preceding 12 month to contract termination; and who expends at least 50% of their total working hours on the terminating Metro contract.
- **LAWA** – The acronym for Los Angeles World Airports, the oversight and operations department for the city of Los Angeles. Metro's LWP/SCWRP wage rates mirror

those of LAWA.

- **LWRP** – The acronym for the Labor, Wage and Retention Programs Unit. The LWRP monitors LW/SCWRP and prevailing wage compliance
- **Person** – Any individual, proprietorship, partnership, joint venture, corporation, Limited Liability Company, trust, association, or other entity that may employ individuals or enter into contracts.
- **Service Contract** – A contract in excess of \$25,000 and in duration of one year or longer awarded to a Contractor by Metro, primarily for the furnishing of services to or for Metro.
- **Subcontractor** – Any firm or entity, 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.
 - **Vendor / Material Supplier** - A contractor who provides materials or purchased goods on a contract and does not perform any work covered by the Living Wage / Service Contract Worker Retention Policy
 - **Covered Vendor / Material Supplier** - A contractor who provides materials or purchased goods on a contract and does perform work covered by the Living Wage / Service Contract Worker Retention Policy
- **Successor Contract** – 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, DEOD, Procurement and the Project Manager shall determine the issue considering Metro’s interest in the continuity of services.
- **Terminated Contractor** – A service Contractor whose service contract has been recently terminated. It also includes a Subcontractor to a service Contractor if the contractor 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** – A violation in which the Contractor knew of his, her, or its obligations under the article and deliberately failed or refused to comply with its provisions.

2.0 LIVING WAGE POLICY (LWP)

2.1 REQUIREMENTS BEFORE WORK BEGINS

The awarded Contractor must submit the following LWP forms after award, but before work begins. The following forms can be found in Appendix A.

- Living Wage Policy Declaration of Compliance (**Form LW-01**)
- LW/SCWRP Subcontractor Declaration of Compliance Form (**Form LW-02**)
- LW/SCWRP Staffing Plan (**Form LW-03A**)
- Holiday/Compensated Time-Off List (**Form LW-03B**)
- Authorization for Deduction (To be submitted with the first payroll) (**Form LW-03C**)

2.2 LWP REQUIREMENT OF MINIMUM COMPENSATION

Contractors shall pay employees a wage of no less than the hourly rates set under this Policy. The Contractor is required to pay, at minimum, the hourly base rate and health benefit rate in effect each fiscal year. These rates will be reviewed by July 5th of each year, and contractors will be advised of any changes to the wages from the previous fiscal year. Contractors have until August 1st to implement the wage rate changes, and must pay employees the wage increase for all hours worked in July.

Metro's living wage rate mirrors the rates set by LAWA. The LAWA wage rate in effect at the time a contract is awarded will be the wage rate in effect until the following June 30th. Metro contractors will continue to adopt the LAWA wage rate for following fiscal years, capped at a maximum increase of 3%.

The Living Wage Policy does not prohibit contractors from paying employees more than the listed living wage rate.

2.3 HEALTH BENEFITS

The Living Wage Policy requires payment of an hourly health benefits rate to covered employees under this Program. At the Contractor's discretion, this amount may be paid in full hourly wages or applied toward the cost of health benefits. If the hourly cost of health benefits is less than the required rate, the difference must be added to the hourly wage to meet the required full wage total.

Employees who do not wish to participate in the employer provided health insurance program and are insured through other means must be allowed to opt out of the work sponsored health insurance. To opt out, employees must provide proof of coverage outside of work.

The contractor must provide a signed **Authorization for Deduction (Form LW-03C)** for each employee for whom they are providing insurance. Failure to provide an Authorization for Deduction could result in an underpayment.

2.4 COMPENSATED AND UNCOMPENSATED LEAVE

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. All contractors shall submit a **Holiday/Compensated Time-Off List** annually.

Accrual of the compensated time off shall be on a monthly basis, starting with the first month of work for the employee, or contract start date, for employees who are employed with the contractor at that time.

2.5 LWP CONTRACTOR REQUIREMENTS

Contractors are required to:

- Post in a conspicuous place, as required by State and Federal laws for other notices to employees (Samples can be found in Appendix B):
 - Living Wage Policy Poster in both English and Spanish (**Form LW-04**)
 - Living Wage Policy Notice to Employees in both English and Spanish (**Form LW-05**)

- Provide notification of all requirements of the Policy to any Subcontractors retained by you to perform any or all of the functions covered by the contract; and ensure compliance to the Policy.
- Monitor and update your payroll records to accommodate Living Wage base wage and health benefit rate increases, when applicable.

2.6 REPORTING REQUIREMENTS

Contractors subject to the LWP shall maintain, and shall require Subcontractors covered by the LWP, to submit original payroll records every two weeks and maintain copies of payroll records for covered employees. Contractors and Subcontractors must maintain the records for at least 3 (three) years after Metro's final payment on the contract.

Contractors and subcontracts shall make these records available for inspection to Metro upon request. Contractors shall make a covered employee's individual record available for inspection to the covered employee upon such a request.

A. Contracts Subject to Prevailing Wage

For contracts awarded under this Policy which are subject to federal and/or state prevailing wage requirement, each Contractor and Subcontractor must review the State of California prevailing wage rates, Federal prevailing wage rates and Metro's Living Wage rates, and shall pay the highest of the three wage rates.

Prevailing wage rates applicable to any contract awarded under this Policy have been established by the Director of Industrial Relations (DIR) and, for Federally-assisted contracts, by the U.S. Department of Labor, Wage and Hour Division (DOL-WHD) [29CFR Part1]. A copy of the DIR and/or DOL-WHD prevailing wage determination(s) applicable to any contract awarded shall be provided by the DEOD and shall be included in the contract by reference. A sample of the prevailing wage certified payroll report is located in Appendix C, **(Form LW-06), (Form LW-07)**.

Contracts subject to prevailing wage are subject to all applicable federal and state labor compliance laws, as noted in Metro's Labor Compliance Manual.

B. Contracts Not Subject to Prevailing Wage, but in which the Living Wage Policy Applies

Contracts awarded under this Policy shall pay the LWP rate of pay. Contractor and any tier

Subcontractor shall pay not less than the specified wage rate to all employees employed in the execution of contracts awarded by Metro under this Policy. Contractors are reminded that the LWP rate of pay may be adjusted annually and therefore the rate of pay reflected in the payroll reports must comply with the current approved rate.

Payroll Reports

The Contractor and any tier Subcontractor must keep and certify on a bi-weekly basis an accurate payroll record for compliance with LWP. A sample of the non-prevailing wage payroll and of compliance can be found in Appendix C, **(Form LW-08)**, **(Form LW-09)**.

1. Weekly and/or Bi-Monthly Submission of LWP Payroll Records

Metro will accept both weekly and bi-weekly certified payrolls. The Contractor and all tier Subcontractors shall submit certified payroll records to DEOD at least bi-monthly, at no cost to Metro. Appendix C, Metro Certified Payroll Form and Statement of Compliance, shall be used for submission of the LWP Payroll. Payroll records shall be submitted bi-monthly after the first performance period of work on the job site and thereafter. The copy of payroll records submitted to Metro shall be certified by statement, signed in ink by the Contractor's designated payroll agent, attesting that the payrolls are correct and complete and that the wage rates contained therein are not less than those set by the applicable prevailing wage determination or the Policy, whichever is higher. Samples of the Statements of Compliance can be found in Appendix C, **(Form LW-07)**, **(Form LW-09)**.

Bi-weekly certified payrolls are not permitted on federally funded contracts that are also subject to federal prevailing wage laws. Contractors on these types of contracts must submit weekly certified payrolls.

Metro reserves the right to reject incomplete or inaccurate payroll reports and request resubmittal of complete reports.

C. Subcontractor Payroll Requirements

Subcontractors are subject to the same requirements as the Prime Contractor. The Prime Contractor shall be responsible for ensuring that all of their Subcontractors, regardless of tier, submit payroll records to Metro. In the event that Subcontractor payroll records are not submitted, Metro may withhold contract payment(s) from the Contractor until full compliance.

2.7 METRO ACCESS TO CONTRACTOR RECORDS

Contractors subjected to the LWP shall allow authorized Metro representatives access to work sites, upon request, to monitor compliance and investigate employee complaints. Contractors shall submit and make available, upon request, copies of payroll records, health benefits statements, and related documents to comply with the Living Wage Policy. Failure to submit documents or allow access to the work sites as requested shall be deemed non-compliant and may result in a recommendation that the Contractor's subject agreement be terminated and/or payments to the Contractor be withheld until access is provided and documentation is submitted.

3.0 SERVICE CONTRACT WORKER RETENTION POLICY

3.1 TYPES OF AGREEMENTS COVERED BY THE POLICY

The SCWRP covers the following types of agreements:

- For services in an amount over \$25,000.00.
- Service contracts with a term of at least one year.

3.2 REQUIREMENTS AFTER AWARD

Contractors awarded contracts as described in section 1.1 shall be required to complete the following information listed below:

- 1) All documents indicated in **section 2** of the Living Wage Manual.
- 2) Employee Retention Requirements - The contractor will be required to provide all 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.

A template of the Employee Retention plan can be found in Appendix D, **(Form LW-10)**.

These documents must be submitted after contract award, but before the first day of work.

3.3 POLICY REQUIREMENTS FOR TERMINATED CONTRACTOR

The SCWRP requires the terminating Contractor to provide Metro with the names, addresses, dates of hire, hourly wage, and job classes of each employee who worked on a Metro agreement for that terminated Contractor or its Subcontractor in the final year of their contract. The Terminated Contractor shall complete the "Terminated Contractor Employee Information Form and Spreadsheet," which is listed as Appendix D, **(Form LW-11)**. Metro will provide the information to the successor Contractor.

3.4 POLICY REQUIREMENTS FOR SUCCESSOR CONTRACTOR

The SCWRP requires the Successor Contractor to:

- Offer employment and retain for a minimum 90-day period the employees who worked for at least 12 months for the terminated Contractor or its Subcontractors.
- Not discharge the employees retained under the SCWRP without cause during the 90-day period.
- Perform a written performance evaluation of each employee retained under the SCWRP at the end of the 90-day period.

3.5 RIGHTS OF EMPLOYEES RETAINED UNDER THE POLICY

Employees retained under the SCWRP are employed under the terms and conditions of the successor Contractor or as required by law. However, if the agreement the employees are working under is subject to Living Wage Policy (LWP), the employees must be paid the wage rate and be provided the benefits required by LWP.

3.6 SUCCESSOR CONTRACTOR RESPONSIBILITIES FOR PRIOR CONTRACTOR'S EMPLOYEES

The SCWRP covers only employees who meet all of the following requirements:

- Have worked at least 50% of their total work hours on a Metro contract.
- Worked for the terminated Contractor or its Subcontractor for the preceding 12 months or longer.
- Not a managerial, supervisory, or confidential employee; or an employee required to possess an occupational license.

3.7 SUCCESSOR CONTRACTORS CONTRACT STAFFING NEEDS

The names of the affected employees will be placed in order of seniority within each job classification. The successor Contractor is required to retain employees based on seniority. The names of employees not retained will be placed on a preferential hiring list from which the successor Contractor must use for subsequent hires.

3.8 EXEMPTIONS TO THE SCWRP

Exemptions to the Service Contract Worker Retention Policy shall include:

- The Contractor is a non-profit corporation
- Total Metro contracts awarded to the Contractor do not exceed \$25,000 in any 12 months period
- Emergency services to prevent or respond to a disaster or imminent threat to public health and safety.
- The terminating contractor will provide continued employment for all eligible SCWRP employees after the completion of the Metro contract. See **Section 3.6** for prior employee eligibility requirements

In order to qualify for an exemption, Contractors or Subcontractors must submit an Application for Exemption, which is included in Appendix E, (**Form LW-12**). The exemption is not valid until the Living Wage Program Manager approves the Contractor's application.

DEOD shall review Applications for Exemption and, upon approval, provide a final determination within 10 working days after receipt of all forms, documentation, and, if necessary, legal opinions from DEOD's County Counsel.

A determination by the DEOD that a Contractor or Subcontractor is exempt from the SCWRP exempts the Contractor or Subcontractor only for the agreement for which the application was submitted. Approval does not exempt the Contractor or Subcontractor for any other solicitation or agreement.

An exemption approval does not extend to any Subcontractor unless the Subcontractor separately applies for and is granted an exemption from the LWP or unless the DEOD has categorically exempted the agreement.

If DEOD categorically exempts an agreement from the SCWRP, then neither the prime Contractor nor any Subcontractor working on the agreement will be subject to the SCWRP.

4.0 ENFORCEMENT AND VIOLATIONS

4.1 NOTICE TO CONTRACTOR OF LIVING WAGE / SERVICE CONTRACT WORKER RETENTION POLICY VIOLATIONS

Contractors determined not in compliance with the LW/SCWRP shall be issued a written notice that the violation must be corrected within ten (10) business days. Requests for reasonable time extensions may be approved by DEOD.

Failure to adhere to any of the LWP or SCWRP Program requirements shall constitute a breach of contract and may result in Metro terminating the contract for default and/or imposition of other appropriate sanctions.

DEOD shall notify Metro's Contract Administrator of any Contractors that have failed to correct the violation(s) within the specified timeframe and may initiate one or more of the following:

- Mandatory LW/SCWRP Training
- Suspension of payment(s) to the Contractor
- Termination of the contract for default
- Debarment from Metro contracts for a period of three (3) years or until all penalties and/or restitution have been fully paid.

Contractors determined by Metro to have violated the LW/SCWRP two or more times in a two-year period shall be subject to enforcement actions as outlined in section 4.1.

4.2 PRIME CONTRACTOR'S RESPONSIBILITY FOR SUBCONTRACTOR

Prime Contractors are responsible for their Subcontractor's compliance and shall ensure:

- All Subcontractors are informed of their responsibilities to comply with LWP and SCWRP
- Required contract language is included in their subcontract agreements
- That the LW/SCWRP Subcontractor Declaration of Compliance is submitted with bid documents or within five (5) days of contract execution
- All Subcontractors fully cooperate with Metro's investigation of any complaints.

Prime contractors are responsible for the compliance of their subcontractors. Failure to pay living wage or refusal by subcontractors to comply with the rules set forth in this manual may result in the need for the prime contractor to resolve underpayments incurred by their subcontractor(s).

4.3 EMPLOYEE COMPLAINT PROCESS

Any covered employee may lodge a written complaint, listed in Appendix F, (Form LW-13), and/or DEOD may at any time review, investigate and/or perform random audits of the Contractor's records to verify compliance with the Policy. An employee, claiming violation of this Policy, may report such claimed violation to DEOD, which shall investigate such complaints. Whether based upon such a complaint or otherwise, where DEOD has determined that a Contractor has violated this Policy, DEOD shall issue a written notice to the Contractor that the violation is to be corrected within 10 days. In the event that the Contractor has not demonstrated to DEOD within such period that it has cured such violation, Metro may assess administrative remedies, as stated in section 4.1.

Consistent with the California Public Records Act, Metro will endeavor to maintain the confidentiality of all records obtained in the course of its investigation.

Metro shall attempt to complete an investigation into an employee's complaint within 30 to 45 days. If the investigation is not complete within 45 days, Metro will notify the employee of the status of the investigation and provide status reports as appropriate.

Corrective payments due employees under the LWP by a Contractor shall be paid to each employee in one payment within the time period specified by Metro in its notice to the Contractor. Proof of correction shall be submitted to Metro within 5 (five) business days of payment to the employee.

4.4 PROHIBITION AGAINST RETALIATION

Neither Contractor as defined under this Policy, nor any other person employing individuals shall discharge, reduce in compensation, or otherwise discriminate against any employee for complaining to Metro with regard to the Contractor's compliance or anticipated compliance with this Policy, for opposing any practice proscribed by this Policy, for participating in proceedings related to this Policy, for seeking to enforce his or her rights under this Policy by any lawful means, or for otherwise asserting rights under this Policy.