

CITY OF LOS ANGELES



RULES AND PROCEDURES

IMPLEMENTING

THE

WORKER RETENTION ORDINANCE

EFFECTIVE January 26, 2018

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**RULES AND PROCEDURES IMPLEMENTING
THE WORKER RETENTION ORDINANCE**

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The Department of Public Works, Bureau of Contract Administration, Office of Contract Compliance ("OCC") promulgates these Rules and Procedures 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 Worker Retention Ordinance ("WRO"). The OCC may also amend or revise these WRO Rules and Procedures from time to time, consistent with applicable law.

DEFINITIONS

For purposes of these Rules and Procedures, 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 Procedures.

"Employee" includes only those employees of a contractor or Subcontractor who work on or under the authority of a City 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 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 Contract.

"Managerial Employee" or **"Supervisory Employee"** as used in LAAC Section 10.36.1(g) 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.

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"Contract" means a contract in excess of \$25,000 and a term of three months or longer awarded 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. Contract also includes a Public lease or License as defined in LAAC Section 10.37.1(k) if the Public lease or License is subject to the Living Wage Ordinance.

"Subcontractor" means a contractor who Contracts 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 Contract will be considered a "recently terminated" Contract subject to the WRO if the Contract was completed, terminated early in whole or part, or amended in a way that reduce 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 terminated Contract. The resulting Contract to provide those substantially similar services is subject to the WRO 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 Contract awarded 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.

A "Terminated Contractor" also includes a Subcontractor to a contractor if the contractor is subject to the WRO and the contract between the contractor and its Subcontractor is terminated prior to the termination of the City Contract.

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PROCEDURE #1: APPLICABILITY

a. Expenditures Covered by the WRO

These Rules and Procedures 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 Procedures shall apply to Contracts executed and to City financial assistance provided after May 18, 1996.

c. Applicability to Contractors of City Financial Assistance Recipients

A CFAR is subject to the WRO 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 WRO shall require all its contractors and Subcontractors to comply with the WRO in all its Contracts, including those 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 contractors to comply with the WRO until the CFAR has completely expended all its City financial assistance funds.

A CFAR may apply for exemption from the WRO 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 WRO unless the OCC has approved the application for exemption.

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PROCEDURE #2: CONTRACT AND AMENDMENT EXECUTION PROCESS

a. Contracts Subject to the WRO

Contracts subject to the WRO shall incorporate the language obligating the contractor to comply with the requirements of the WRO. No Contract subject to the WRO may be executed unless the Contract incorporates the provisions of the WRO.

b. Contracts Subject to the WRO as a Result of an Amendment

Contracts that become subject to the provisions of the WRO because of an amendment shall incorporate language obligating the contractor to comply with the requirements of the WRO. No such amendment to a Contract may be executed unless the amendment incorporates the provisions of the WRO.

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PROCEDURE #3: TERMINATION OF CONTRACT

If the awarding authority proceeds to terminate a Contract that is subject to the WRO and plans to execute a Successor Contract with a Successor Contractor, the awarding authority shall:

- a. Notify the OCC of the awarding authority's intent to terminate the Contract, who the Successor Contractor will be, if known, and when the Successor Contract will begin or is expected to begin.
- b. Inform the Terminated Contractor that it is subject to the WRO and require the Terminated Contractor to provide the awarding authority within 10 days of such notice a list of the Terminated Contractor's Employees covered by the WRO.
- c. The awarding authority may refer the Terminated Contractor to the OCC for additional information.

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PROCEDURE #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 WRO Section 10.36.3 (a))

b. Employee Complaints

An Employee making a complaint regarding an employer's compliance with the WRO 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 WRO, the OCC shall proceed as provided for in WRO 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 reconsider 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 WRO, 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

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 kept confidential as permitted by applicable law and except where compelled by law.

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

Prime contractors shall include the WRO's requirements in contracts executed with Subcontractors, be responsible for ensuring that their Subcontractors comply with the WRO and may be deemed noncompliant with or in violation of the WRO for any of its Subcontractors' violations.

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**PROCEDURE #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 WRO as required by the Ordinance and these Rules and Procedures, the City may withhold any final payment(s) due to the Terminated Contractor and pursue any available legal remedies.