

**BOARD OF PUBLIC WORKS  
MEMBERS**

KEVIN JAMES  
PRESIDENT

MONICA RODRIGUEZ  
VICE PRESIDENT

HEATHER MARIE REPENNING  
PRESIDENT PRO TEMPORE

MICHAEL R. DAVIS  
COMMISSIONER

JOEL F. JACINTO  
COMMISSIONER

FERNANDO CAMPOS  
EXECUTIVE OFFICER

**CITY OF LOS ANGELES  
CALIFORNIA**



ERIC GARCETTI  
MAYOR

JOHN L. REAMER, JR.  
Inspector of Public Works  
and  
Director

**BUREAU OF  
CONTRACT ADMINISTRATION**

1149 S. BROADWAY, SUITE 300  
LOS ANGELES, CA 90015  
(213) 847-1922

<http://bca.lacity.org>

Honorable Members of the City Council  
c/o Holly L. Wolcott, City Clerk  
200 N. Spring Street, Room 395  
Los Angeles, CA 90012

October 15, 2015

Honorable Members:

**BUREAU OF CONTRACT ADMINISTRATION – EQUAL EMPLOYMENT OPPORTUNITY  
ENFORCEMENT AMENDMENTS (COUNCIL FILE 15-0817)**

Provided for your consideration is the Bureau of Contract Administration's (BCA's) amendment for the following ordinances: Living Wage, Equal Benefits, First Source Hiring, Service Contractor Retention Worker, and the Non-Discrimination Practices, Equal Employment Practices, Affirmative Action Program Ordinances

**AMENDMENT SUMMARY**

The Office of Contract Compliance (OCC) has prepared and now transmits for your consideration the list of amendments. These amendments will create a more efficient and effective contracting process for contractors as well as City departments.

Streamlining is an essential goal to becoming more efficient and effective. A part of the streamlining effort includes establishing a standard threshold of \$25,000 for the Living Wage, Equal Benefits, First Source Hiring, Service Contractor Retention Worker, and Affirmative Action Plan Ordinances. Any contracts in excess of \$25,000 will have to comply with the various ordinances. This will eliminate confusion for awarding departments and contractors when determining the applicability of each of the ordinances.

Many of the ordinances require clarification, consistency and wage updates. For instance, ordinances such as the Service Worker Retention Ordinance still have a threshold of \$15 in order for the employees to be covered. With increasing wage rates, some employees are no longer protected and could potentially lose their jobs.

In 2009, when the Department of Airports Living Wage Ordinance (LWO) health benefits rate increased to \$4.50, the City was the leader in promoting a health benefit that would cover a family of four. However, since then, the Department of Airports LWO rates have once again



fallen below the industry market rates. Because of the success that the San Francisco International Airport (SFO) has had with their LWO and the fact that SFO is comparable to the Department of Airports in the number of passengers and aircraft operation while also sharing similar LWO polices, SFO's LWO rate increase was reviewed as a model comparison for the Department of Airports LWO rates. And in comparison, it was revealed that SFO's LWO rates are nearly \$1.50 higher than the Department of Airports. In order to reduce turnover and retain a qualified and stable workforce the City should address and equalize the wage and health benefits for LWO Airport Employees.

With better understanding and experience from working with each of the ordinances, the OCC has identified the areas that could be improved to better serve the City. The creation of the amendments addresses issues that should be clarified for a more efficient contracting process in addition to ensuring the strength and effectiveness of enforcement capabilities.

## **LIST OF AMENDMENTS**

### Living Wage Ordinance

- Amendments to Section 10.37 were necessary for reorganization and to provide consistency with other ordinances and to provide a better structure.
- Some of the amendments were moved from the Rules and Regulations to provide clarification and to provide a better structure.
- Some of the amendments were added as a result of litigation.
- Changes to the Legislative Findings to remove the arbitration process.
- Section 10.37.1(e) to delete CRA from the definition.
- Section 10.37.1(i) Definition of Employee – the changes will clarify that the LWO will only apply to employees in the US and employees with an occupation license (including those with driver license).
- Section 10.37.1(j) Delete reference “and who is required to have a business tax registration certificate by Los Angeles Municipal Code 21.00-21.198 or successor ordinances to the tax but for such exemption.”
- Section 10.37.1(l) Definition of Public Lease or License
  - Determinations of coverage that would further the proprietary interests of the City will now have to be approved by the Board of Public Works.
  - Include Non-Exclusive License Agreements, Air Carrier Operating Permits and Certified Service License Agreements.
  - Deleting the words “substantial” and “frequent.”
  - Include language clarifying “proprietary interest.”
- Section 10.37.1(m) Definition of Service Contract
  - Determinations of coverage that would further the proprietary interests of the City will now have to be approved by the Board of Public Works.
  - Include language clarifying “proprietary interest.”
- Section 10.37.2(a) Wages – Add language to clarify that the Living Wage rates will only be paid on hours worked on the City contract.



- In an effort to keep pace with market rates in the industry, we are recommending the following increases:
  - Section 10.37.2(a) to increase the wage for Airport Employees. Include the following language: On July 1, 2015, the wage for Airport Employees will increase to \$11.33 per hour with health benefits or \$16.26 without health benefit. After July 1, 2015 the annual increase will continue as provided in 10.37.2(a)(2).
  - Section 10.37.3(a) Section 10.37.2(a) to increase the health benefits for Airport Employees. Include the following language: On July 1, 2015, the health benefit cost for Airport Employees will increase to \$4.93 per hour. After July 1, 2015 the annual increase will continue as provided in 10.37.2(a)(2).
- Section 10.37.2 to update the language to reflect changes to how annual increases are adjusted.
- Section 10.37.2 (b) – Move language from the Rules and Regulation. Include new language regarding full and part time Employees.
- Section 10.37.3 Health Benefits – Removing language regarding waiving health benefits if there is an out of pocket cost. Include new language stating that health benefits will not be paid on overtime hours.
- Section 10.37.3 Add language from Rules and Regulation specifying what is a health benefit such as dental and vision insurance. Also include language from Rules and Regulation allowing employers to pay a lower health benefits and a higher cash wage.
- Section 10.37.4 Move language from Rules and Regulation regarding posting the Living Wage Poster and the Notice Regarding Retaliation, and holding Contractors responsible for notifying subcontractors.
- Section 10.37.4 Include language requiring employers to retain payroll records for a period of at least four years.
- Section 10.37.6(d) Enforcement
  - The Designated Administrative Agency (DAA) was given the ability to determine non-compliance with the LWO should an Employer fail to cooperate.
  - Guidelines for the DAA have been included in cases where an Employee files a complaint.
  - Remove DAA's request for the city attorney to bring a city action.
  - Remove language relating to arbitration paid for by the City.
  - Include new language in the event the Employer has not demonstrated compliance. To return to the City money held in retention when the DAA has documented the Employer's liability for unpaid wages, health benefits or compensated time off.
  - Replace debarment with Los Angeles Administrative Code Section 10.40 Contractor Responsibility Ordinance.
- Create Section (10.37.8) stating that the City is a Third Party Beneficiary of Contracts between an Employer and Subcontract for the Purpose of Enforcement. And delete language relating to \$2,000,000 contracts and Charter Section 372.
- Section 10.37.13 Delete “Services that are more than incidental.”
- Create Section 10.37.14 Contracts, Employers and Employees Not Subject to This Article. This is a new section created to provide clarity as to who the LWO does not apply to. This section will include, employees covered by Prevailing Wage, governmental entities, and the



Public Utilities Commission. LWO coverage should also include employees covered by the Prevailing Wage who earn less than the Living Wage rates and employees working on construction contracts who are not covered by the Prevailing Wage.

- Section 10.37.15 will now include all exemptions and to allow the City Council and the DAA to waive provisions.

#### Equal Benefits Ordinance

- Section 10.8.2.1(b)(5) to change the definition of Contract to agreements exceeding \$25,000.
- Section 10.8.2.1(g)(2) to add “Failure by the contractor to cooperate with the DAA will result in the contractor being deemed out of compliance with the Equal Benefits Ordinance.”

#### First Source Hiring Ordinance

- Section 10.44.1 to delete Community Redevelopment Agency from the definition of “Awarding Authority”.
- Section 10.44.1 to delete the definition of CDD.
- Section 10.44.1 to include a new definition for EWDD
- Section 10.44.1 to replace CDD with EWDD.
- Section 10.44.2 to require contractors to directly inform EWDD of any upcoming employment opportunities and to restructure.
- Section 10.44.2 (d) to delete professional license exemption.
- Section 10.44.8 to include in the enforcement section to add the option for the DAA to recommend payment withhold if a Contractor is found to have violated the Ordinance.

#### Service Contractor Worker Retention Ordinance

- Amendments to Section 10.36 were necessary for reorganization and to provide consistency with other ordinances and to provide a better structure.
- Some of the amendments were moved from the Rules and Regulations to provide clarification and to provide a better structure.
- Section 10.36.1(d) “Contractor” to include an exemption for governmental entities.
- Section 10.36.1(e) to change the definition of Employee to raise the \$15.00/hr threshold under which a worker qualifies as an “employee.” Proposal:
  - Employee means any person employed as a service employee of a Contractor or Subcontract earning no more than twice the hourly wage without health benefits available under the Living Wage Ordinance...”
- Section 10.36.1 (i) “Successor Service Contract” to include clarification on the term termination. “Termination includes, but not limited to: (1) the completion of the Service Contract; (2) early termination of the Service contract in whole or in part; (3) an amendment that reduces services provided under the Service Contract, in whole or in part.”
- Section 10.36.2 Include language from the Rules and Regulation.
  - Include a new requirement for Successor Contractor to provide additional information to Awarding Department and DAA if work is different from the Terminated Contractor.





- Require the Successor Contract to provide copies of the letters offering employment to the Awarding Authority and proof of mailing.
- Section 10.36.2 (e) Change the “cause” of discharge to the definition in California Labor Code Section 2924.
- Section 10.36.4 (b) to add language giving the DAA the applicability to waive the provisions if in the best interest of the City.
- Section 10.36.3(d) Give the DAA the ability to make recommendations to the Award Authority should a Contractor and Subcontractor violate this article. Including LAAC Section 10.39 Contactor Evaluation, LAAC 10.4 Contract Responsibility Questionnaires, withhold and termination.

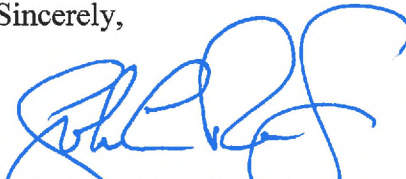
#### Non-discrimination/Equal Employment/Affirmative Action Provisions

- Amendments to Section 10.8 and 10.13 were necessary for reorganization and to provide consistency with other ordinances and to provide a better structure. Some of the amendments address legal issues.
- Section 10.8.1 to delete “who submits a bid or proposal.”
- Section 10.8.2 and 10.8.3 - Add "color" for consistency with state and federal law.
- Amend the following sections to replace the Non-Discrimination/Equal Employment Practices Certification with the inclusion of this language into the standard provisions of all City contracts:
  - Section 10.8.3(c) to remove “As part of the City’s supplier registration process.”
  - Section 10.8.3(j) to replace “At the time a supplier registers to do business with the City, or when an individual bid or proposal is submitted,” with “By affixing its signature on a contract.”
- Sections 10.8.4 and 10.8.4(k)(1) and 10.13 and 10.13(1) to establish a uniform threshold of \$25,000 for construction and non-construction contracts.
- Section 10.8.4(c) to remove “As part of the City’s supplier registration process” for consistency with revisions to 10.8.3(c) of the Equal Employment Practice provisions.
- Sections 10.8.4(k) and 10.13 (first paragraph) to require contractors to accept the City’s Affirmative Action (AA) Program provisions by affixing their signature on the contract which shall be valid for the term of the contract, thereby eliminating annual document submittals and pre-contract approvals by the DAA.
- Delete Section 10.8.4(l) to remove the annual listing of approved AA Program (which is now obsolete with BAVN and would remain obsolete if the AA requirement is included in contract language).
- Section 10.8.4(m) to delete “to be submitted” and “Board of Public Works, Office of Contract Compliance.”
- Section 10.13 to remove the requirement to submit or receive an approval of an AA Plan. Instead, by affixing their signature on the Contract, a Contractor will agree to adhere to the provisions. And rather than require contractors to submit the anticipated level of staff utilization, to make it at the request of the Office of Contract Compliance.
- Delete Section 10.13.7 the requirement of contractors and their subcontractors to complete and file and AA Plan.



- Delete Section 10.13(8) to remove the requirement to submit the Ethnic Composition of Workforce form (no longer required per DAA procedures).
- Section 10.8.3(1), Section 10.8.4(q) and 10.13(14) to state that construction subcontracts shall include “the same thresholds and like provisions” in all subcontracts.

Sincerely,



JOHN L. REAMER, JR., Director  
Bureau of Contract Administration

JLR:bes  
20151015 Amendments

