

ORDINANCE NO. 4837
BOARD OF SUPERVISORS, COUNTY OF SAN MATEO,
STATE OF CALIFORNIA

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ORDINANCE AMENDING: (1) SECTION 2.84.030 OF CHAPTER 2.84, SECTIONS 2.85.010 AND 2.85.020 OF CHAPTER 2.85, AND SECTION 2.88.020 OF CHAPTER 2.88 OF THE SAN MATEO COUNTY ORDINANCE CODE TO ALIGN WITH CHANGES TO THE GOVERNMENT CODE AND ADMINISTRATIVE MEMO B-1; AND (2) SECTION 2.88.020 OF CHAPTER 2.88 OF THE SAN MATEO COUNTY ORDINANCE CODE TO USE THE SAME TERM AS THE UNITED STATES DEPARTMENT OF LABOR, BUREAU OF LABOR STATISTICS FOR THE METROPOLITAN AREA THAT INCLUDES SAN MATEO COUNTY

The Board of Supervisors of the County of San Mateo, State of California, **ORDAINS** as follows:

SECTION 1. Section 2.84.030 of Chapter 2.84 of Article 2.8 of the San Mateo County Ordinance Code is hereby amended to read as follows:

(a) All contracts for services entered into with the County, with or without the provision of goods, shall contain the following language or language to similar effect:

Violation of the non-discrimination provisions of this agreement shall be considered a breach of this agreement and subject the contractor to penalties, to be determined by the County Manager, including but not limited to the following:

- (i) Termination of this agreement;
- (ii) Disqualification of the Contractor from proposing for or being awarded a County contract for a period of up to 3 years;
- (iii) Liquidated damages of \$2,500 per violation; and

(iv) Imposition of other appropriate contractual and civil remedies and sanctions, as determined by the County Manager.

To effectuate the provisions of this paragraph, the County shall have the authority to set off all or any portion of the amount described in this paragraph against amounts due to contractor under this agreement or any other contract between contractor and County.

Contractor shall also report to the County the filing by any person in any court any complaint of discrimination or the filing by any person of any and all charges with the Equal Employment Opportunity Commission, the Fair Employment and Housing Commission, or any other entity charged with the investigation of allegations of discrimination within 75 days of such filing, provided that within such 75 days such entity has not notified contractor that such charges are dismissed or otherwise unfounded. Such notification to County shall include a general description of the allegations and the nature of specific claims being asserted. Contractor shall provide County with a statement regarding how it responded to the allegations within 60 days of its response and shall update County regarding the nature of the final resolution of such allegations.

(b) This language in any given contract may be modified or omitted pursuant to County policies. The Board of Supervisors may authorize such waiver or modification for contracts exceeding the threshold set forth in California Government Code Section 25502.5 when it is in the best interests of the County. The County Manager, or the County Manager's designee, may authorize such waiver or modification for contracts that do not exceed the threshold set forth in California Government Code Section 25502.5 when it is in the best interests of the County, or as otherwise authorized by the Board of Supervisors.

SECTION 2. Section 2.85.010 of Chapter 2.85 of Article 2.8 of the San Mateo County Ordinance Code is hereby amended to read as follows:

For the purposes of this chapter:

(a) "Contract" means a legal agreement between the County and a contractor for services that receives consideration in excess of the amount established by Government Code Section 25502.5 as the limit of the Purchasing Agent's authority to engage independent contractors.

(b) "Contract Authority" means: the Board of Supervisors for contracts exceeding the threshold set forth in California Government Code Section 25502.5; or the County Manager or the County Manager's designee for contracts that do not exceed the threshold set forth in California Government Code Section 25502.5, or as otherwise authorized by the Board of Supervisors.

(c) "Employee" means any California resident who is a full-time employee of a contractor under the laws of California.

(d) "Full time" means 40 hours or more worked per week, or a lesser number of hours if: (1) the lesser number is a recognized industry standard as determined by the County Manager, or (2) the contractor has a long standing practice that defines the lesser number of hours as full time.

SECTION 3. Section 2.85.020 of Chapter 2.85 of Article 2.8 of the San Mateo County Ordinance Code is hereby amended to read as follows:

(a) A contractor shall have and adhere to a written policy that provides that its employees shall receive from the contractor, on an annual basis, no less than five days of regular pay for actual jury service in San Mateo County. The policy may provide that employees deposit any fees received for such jury service with the contractor or that the contractor deduct from the employees' regular pay the fees received for jury service.

(b) At the time of seeking a contract, a contractor shall certify to the County that it has and adheres to a policy consistent with this chapter or will have and adhere to such a policy prior to award of the contract.

(c) The Contract Authority may waive the requirements of this chapter when it determines that it is in the best interests of the County for such reasons as follows:

1. Award of a contract or amendment is necessary to respond to an emergency;
2. The contractor is a sole source;
3. No compliant contractors are capable of providing goods or services that respond to the County's requirements;
4. The requirements are inconsistent with a grant, subvention or agreement with a public agency;

5. The County is purchasing through a cooperative or joint purchasing agreement.

(d) Contractors should submit requests for waivers of the terms of this chapter to the Contract Authority or the County Manager.

(e) The County Manager may reject a contractor's bid or proposal, or terminate a contract, if he determines that the contractor is in violation of the requirements of this chapter or was established, or is being used, for the purpose of evading the intent of this chapter.

(f) No contract shall be executed with a contractor unless such contractor is in compliance with this chapter.

SECTION 4. Section 2.88.020 of Chapter 2.88 of Article 2.8 of the San Mateo County Ordinance Code is hereby amended to read as follows:

(a) "Contract Awarding Authority" means: the Board of Supervisors for contracts exceeding the threshold set forth in California Government Code Section 25502.5; or the County Manager or the County Manager's designee for contracts that do not exceed the threshold set forth in California Government Code Section 25502.5, or as otherwise authorized by the Board of Supervisors.

(b) "Contractor" means a party that enters into a covered contract with the County. Contractor does not mean:

1. Government entities, including cities, counties, and state agencies.

(c) "County" means the County of San Mateo.

(d) "Covered contract" means a legal agreement between the County and a contractor for the provision of services entered into on or after April 1, 2017.

1. Where one entity has multiple contracts with the County, only those contracts that are covered contracts are subject to this chapter.
2. Legal agreements for the exclusive use of real property owned by the County, including, without limitation, any lease, concession, franchise, or easement agreement, are not covered contracts.

(e) "Covered contract amendment" means the amendment of a contract on or after January 1, 2017, that:

1. Voluntarily subjects the contract to the requirements of this chapter;

2. Increases the contract price more than \$25,000.00; or
3. Extends the contract term.

Covered contract amendments are subject to the requirements of this chapter.

(f) "Covered employee" means any permanent or temporary employee employed by a contractor or a subcontractor on a full-time or part-time basis to provide services under a covered contract. Covered employee does not mean:

1. Any person providing services to earn academic credit;
2. Any person providing uncompensated volunteer services;
3. Any person working toward state licensure or professional accreditation sanctioned by a public entity or a recognized licensure agency;
4. Any person working as an election day worker;
5. Any disabled person covered by a current sub-minimum wage certificate issued to the contractor or subcontractor by the United States Department of Labor, or any person who would be covered by such certificate but for the fact the contractor or subcontractor is paying a wage equal to or higher than the minimum wage;
6. Any person employed to provide in-home supportive services;
7. The County Manager's Office shall have discretion to exclude certain additional categories of employees from the definition of covered employee when in the best interest of the County to do so.

(g) "CPI-U" means the consumer price index for urban consumers for the San Francisco-Oakland-Hayward, CA metropolitan area, as determined by the United States Department of Labor, Bureau of Labor Statistics.

(h) "Enhancement" means a payment from the County to eligible nonprofit organizations that amend existing contracts to comply with the living wage ordinance. An enhancement shall be a percentage of a covered contractor's total contract price, as specified by this chapter, and shall be paid annually until the contract ends or the not-to-exceed amount is amended.

(i) "Living wage" means the wage rate specified by this chapter.

(j) "Nonprofit organization" refers to a nonprofit corporation, duly organized, validly existing, and in good standing under the laws of the jurisdiction of its incorporation and (if a foreign corporation) in good standing under the laws of the State of

California, which corporation has established and maintains a valid nonprofit status under Section 501(c)(3) of the United States Internal Revenue Code of 1986, as amended, and all rules and regulations promulgated under such section.

(k) "Reserve" means funds maintained by the County to pay for approved enhancement appeals.

(l) "Services" means any professional, technical, or non-technical services specified in a legal agreement with the County. Services do not include:

1. The provision of goods, products, or real estate; or
2. The acquisition of goods or services related to information technology, such as computer hardware, software licenses, software development, and maintenance of hardware and software.

(m) "Sole source" means only one entity has been identified as capable of providing and willing to provide the services sought by the County.

(n) "Subcontractor" means a party, other than an employee, that agrees to assist a contractor in providing services under a covered contract.

(o) "Wage" means a covered employee's hourly wage or hourly wage equivalent. For a full-time employee, hourly wage equivalent is determined by dividing two weeks of salary by eighty (80).

SECTION 5. This Ordinance shall be effective thirty days after adoption.

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