

County of Santa Clara
Office of the County Executive



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DATE: March 8, 2022

TO: Honorable Members of the Board of Supervisors
Jeffrey V. Smith, County Executive

FROM: Rocio Luna, Deputy County Executive
Gene Clark, Chief Procurement Officer

SUBJECT: County Contracts Labor Standards Enforcement Program Update

1. Background

On December 20, 2021 (Item No. 15), the Finance and Government Operations Committee (FGOC) approved a referral from Vice-Chair Chavez to provide a report on the body of work and expansion timeline relative to the County Contracts Labor Standards Enforcement Program.

The Board of Supervisors adopted its Wage Theft Prevention Policy in 2014 to leverage County contracts as enforceable mechanisms for the ongoing prevention of wage theft violations. The Policy requires all contractors to comply with applicable federal, state, and local wage and hour laws, including but not limited to the Federal Fair Labor Standards Act, the California Labor Code, and any minimum wage ordinance enacted by the County or any city within the county. To implement this Policy, the County incorporates a provision into its standard terms and conditions for all County contracts that prohibits violation of wage-theft and other labor laws, and also requires that contractors disclose to the County all final judgments against them for such violations. The County Contracts Labor Standards Enforcement Program deploys this provision to ensure that current and potential County contractors abide by these labor provisions.

Enforcement of the Board's Wage Theft Prevention Policy through the County Contracts Labor Standards Enforcement Program aligns with and advances the County's interest in ensuring that workers are fully compensated, safeguards that the County does not financially support employers with outstanding wage theft judgments, and aids in the enforcement of wage and hour laws. By ensuring the County's own record with wage theft is clean, the Program also effectively positions the County to take the moral and operational lead on a wide range of worker-protective activities, from ensuring that food-facility permittees do not commit wage theft, and educating workers around the county about their rights, to partnering with cities within the county to enforce local minimum wage and other labor standards. At the same time, the Program also offers other jurisdictions a model to take affirmative steps to prevent public dollars from contributing to wage theft and other worker abuses.

Before the launch of the County Contracts Labor Standards Enforcement Program, the County administered this policy through a self-reporting model. Specifically, the County required prospective vendors to self-certify their compliance with the County's policy prior to contract award and throughout the duration of the contract. Enforcement thus relied on contractors' own reports. However, once the Office of Labor Standards Enforcement (OLSE) began accessing state and federal wage-theft judgment data through intergovernmental data sharing agreements, OLSE and the Office of Countywide Contracts Management (OCCM) collaborated to develop a more proactive process for policy enforcement that more thoroughly ensures County contractors pay all outstanding, unpaid wage-theft judgments.

2. Program Pilot Summary

OLSE and OCCM began proactive enforcement of the Wage Theft Prevention Policy on May 12, 2021, when they led the County Contracts Labor Standards Enforcement Program as a pilot. During the pilot phase, which ran through September 1, 2021, the program focused on contracts managed by the Procurement Department's Facilities, Office, and Institutions Operations (FOIO) team. FOIO manages 384 agreements, including several contracts for nonprofessional services identified as high risk for wage theft. During the pilot period, FOIO reviewed 158 vendors that were current contractors with contract amendments or purchase orders, or were potential contractors that submitted responses to solicitations. With OLSE's assistance, FOIO examined whether these vendors and contractors were subject to outstanding wage-theft judgments issued by the California Labor Commissioner's Office.

FOIO identified three outstanding judgments that appeared to be associated with four vendors. OLSE and FOIO closed two cases after confirmation from the Labor Commissioner's Office that the judgments for those two cases had already been satisfied, meaning those judgments were not outstanding or unpaid. Accordingly, OLSE and FOIO continued the contract term and solicitation without change. With respect to the third judgment, OLSE determined after research that the judgment applied to a commercial landscaping company related to but separate from two County contractors. The two contractors provide landscaping and tree trimming services under a contract whose value is \$2,200,000. Because the judgment debtor is not a County contractor, the County has no contractual authority over it. As an alternative, OLSE worked with the Labor Commissioner's Office and notified the California Contractors State Licensing Board about the judgment; the result was that the judgment debtor satisfied the remaining outstanding judgment by paying the affected worker \$748.20 on July 27, 2021.

After the pilot period ended on September 1, 2021, FOIO has continued to screen every contractor for unpaid wage theft judgments and has continued to work with OLSE to implement this screening process as a standard business practice for its contracts management.

3. Program Expansion Timeline

OLSE and OCCM will grow the County Contracts Labor Standards Enforcement Program in a phased approach over the next several years. The Program will expand in 2022 to cover all centralized contracting units; and then engage decentralized contracting units in 2023-2024. Accordingly, the Program will account for all County contracts by 2025. The timeline below provides approximate phases and dates for each milestone of Program expansion towards countywide operation.

OLSE will work in collaboration with the Procurement Department, OCCM, and County Counsel on two other components of the Program:

First, the Program will train vendors and provide compliance materials so that County vendors and contractors know about their obligation to comply with the Wage Theft Prevention Policy and all applicable wage and hour laws.

Second, the OLSE will train County staff for Program expansion in the phases indicated below. OLSE and OCCM staff will be the main points of contact to County staff for questions, support in implementing decisions, and active County contractor screenings for outstanding judgments. In addition, OLSE will continue to confer with the Office of the County Counsel to consider and evaluate additional opportunities to leverage the County's contracting power to audit contractors for compliance with labor laws and relevant contractual provisions.

A. Phase I: Pilot Program and Integrate Learnings and Process Improvements (May 2021 - December 2021)

Launch pilot program by focusing on contracts executed and administered by FOIO. Provide training to FOIO staff on Program processes, resources, databases, and workflows to integrate screening for outstanding judgments into FOIO's standard business practice. Through an iterative process, continue supporting FOIO staff throughout pilot program and receive feedback following the pilot program to integrate learnings and process improvements.

B. Phase II: Centralized Procurement Program Expansion and Integrate Learnings and Process Improvements (January 2022 - December 2022)

Expand Program by focusing on contracts executed and administered by the Procurement Department's centralized contracting units like Technology Solutions, Healthcare Support and Special Projects, and Medical and Patient Care. Procurement units will be onboarded into the Program in stages to allow for OLSE and OCCM to properly train staff on Program processes, resources, databases, and workflows to integrate screening for outstanding judgments into their standard business practice in awarding contracts.

C. Phase III: Decentralized Procurement Program Expansion and Integrate Learnings and Process Improvements (January 2023 - December 2024)

Expand Program by focusing on contracts executed and administered by the Procurement Department's decentralized contracting units for professional services. Procurement units will be onboarded into the Program in groups to allow for OLSE and OCCM to properly train staff on Program processes, resources, databases, and workflows to integrate screening for outstanding judgments into their standard business practice in awarding contracts.

D. Phase IV: Countywide Program Operations (approx. January 2025)

Maintain Program operations for Countywide contracts wage theft compliance. OLSE and OCCM staff will remain main points of contact to County staff for questions, support in implementing decisions, and active County contractor screenings for outstanding judgments.

cc: Miguel Márquez, Chief Operating Officer
James R. Williams, County Counsel
Tiffany Lennear, Clerk of the Board
Chief Board Aides