



**Policy Type:** Board

**Category:** Procurement

**Policy Name:** General Contract Policies and Provisions - Board Policy 5.5

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## **5.5 GENERAL CONTRACT POLICIES AND PROVISIONS (Amended 11-4-14; Amended 12-16-14; Amended 12-13-16; Amended 3-14-17)**

### **5.5.1 Overview**

This section describes the contracting policies and provisions that should be included in County contracts, subject to approval from County Counsel.

### **5.5.2 Policy**

It is the policy of the Board that all County contracts include certain policies and provisions in order to ensure that the County's interests, including financial interests, are protected and that the County complies with applicable laws. This section also reflects the Board's commitment to increasing social and environmental awareness and responsibility in the County.

### **5.5.3 Background**

The County has identified certain contract provisions that generally should be included in all its contracts to ensure that the County's interests are protected. From time to time, the Board has also adopted policies that Agencies/Departments are required to incorporate into County contracts.



Most of the policies apply on an across-the-board basis regardless of the type of contract. Variations in this policy may be noted in other sections of this policy where a particular category of contract or procurement practice is discussed. Where a variation exists, the policy outlined for the particular category of contract or selection practice will prevail over the more general guidelines that are contained in this section.

### **5.5.4 Purpose**

The purpose of Section 5.5 is to establish a policy that addresses the provisions and policies that Agencies/Departments are required to include in all County contracts.

### **5.5.5 Application of the Policy**

#### **5.5.5.1 Legal Review by County Counsel**

All contracts must be reviewed and approved by County Counsel as to form and legality. This does not include standard template agreements, such as the County's Standard Service Agreement Form, because they have already been reviewed and approved by County Counsel. Attachments to the Standard Service Agreement Form, such as a statement of work, must not conflict with the terms and conditions of the Agreement Form. If an Agency/Department determines there is a potential conflict, it should ask County Counsel to review the Agreement Form and relevant attachment(s). If Agencies/Departments make changes to the Agreement Form, including attaching additional terms and conditions, then the Agreement Form needs to be reviewed and approved by County Counsel.

All contract templates must include a date on the template that indicates the last time the terms and conditions were reviewed and approved by County Counsel. County Counsel shall periodically review such templates.



### **5.5.5.2 Contract Review**

All agencies/Departments are required to have a review process for their contracts to ensure compliance with any applicable policies and laws and to protect the interests of the County. This process should include an acquisition planning phase that gives the Agency/Department sufficient time to conduct any necessary market research and complete the process in a timely and efficient manner.

### **5.5.5.3 Mandatory Contract Provisions**

Unless otherwise provided, County contracts and solicitations must contain certain mandatory provisions adopted by the Board, which are incorporated herein and made part of Board Policy by this reference. If an Agency/Department has been delegated authority for a particular contract and the Agency/Department has questions related to the inclusion of the mandatory contract provisions, that Agency/Department must work with County Counsel and OCCM to resolve those questions. These mandatory provisions and the required language for these provisions are maintained by OCCM.

### **5.5.5.4 Mandatory Policy Provisions**

The Board has also adopted the following policies that must be incorporated in all County expenditure contracts, unless otherwise provided. If an Agency/Department has been delegated authority for a particular contract and the Agency/Department has questions related to the inclusion of the mandatory policy provisions, that Agency/Department must work with County Counsel and OCCM to resolve those questions. There may be other policy provisions, which apply to some County contracts that are included in other sections of the Board Policy Manual.



Agencies/Departments should consult with County Counsel to ensure that all applicable policies are incorporated into the contracts.

### **Equal Opportunity/Nondiscrimination**

No party contracting with the County will discriminate against any subcontractor, employee, or applicant for employment, because of age, race, color, national origin, ancestry, religion, sex, gender, sexual orientation, mental disability, physical disability, medical condition, political beliefs, organizational affiliations, or marital status with respect to recruitment, selection for training including apprenticeship, hiring, employment, assignment, promotion, layoff, rates of pay or other forms of compensation. It is further the policy of the County that no party contracting with the County may discriminate in the provision of services under the contract because of age, race, color, national origin, ancestry, religion, sex, gender, sexual orientation, mental disability, physical disability, medical condition, political beliefs, organizational affiliations, or marital status.

It is the policy of the County that parties contracting with the County must comply with all applicable federal, state, and local pay equity laws, including, but not limited to, the Federal Equal Pay Act, Title VII of the Civil Rights Act of 1964, the California Fair Pay Act, and the California Fair Employment and Housing Act. A potential contractor that has submitted a formal bid to provide goods and/or services to the County may be disqualified if the potential contractor has been found, by a court, arbitrator, arbitral panel, or a final administrative action of an investigatory government agency, to have violated applicable pay equity laws in the five years prior to the submission of a bid to provide goods and/or services. A current contractor found by a court, arbitrator, arbitral panel, or final administrative action of an investigatory government agency to have violated applicable pay equity laws, in the five years prior to or during the term of the contract with the County, may be in material breach of its



contract with the County if the violation is not fully disclosed and/or satisfied per County guidelines and contract requirements. Such breach may serve as a basis for contract termination and/or any other remedies available under law, including a stipulated remediation plan. Pay equity violations disclosed by a contractor or potential contractor will be assessed on a case-by-case basis in light of the totality of the circumstances, including whether the violation is serious, repeated, willful, and/or pervasive, the size of the contractor, and any mitigating factors.

### **Beverage Nutritional Criteria**

It is the policy of the Board that County funds that are being used to purchase food and beverages on behalf of the County must not be used to purchase beverages that do not meet the County's nutritional beverage criteria. These criteria may be waived in the event of an emergency or in light of medical necessity. The criteria for waiver are set forth in the Administrative Guidelines for this section.

### **No Smoking**

It is the policy of the County that all contractors and their employees, agents and sub-contractors who will have any contact with County property pursuant to a contract with the County must comply with the County's No Smoking Policy set forth in Board Policy 3.47.

### **Contracting Principles**

It is the policy of the Board that all entities that contract with the County to provide services where the contract value is \$100,000 or more per budget unit per fiscal year and/or as otherwise directed by the Board, must be fiscally responsible entities and must treat their employees fairly.



To ensure compliance with these contracting principles, all contractors must: (1) comply with all applicable federal, state and local rules, regulations and laws; (2) maintain financial records, and make those records available upon request; (3) provide to the County copies of any financial audits that have been completed during the term of the contract; (4) upon the County's request, provide the County reasonable access, through representatives of the Contractor, to facilities, financial and employee records that are related to the purpose of the contract, except where prohibited by federal or state laws, regulations or rules.

The factors the County considers in determining compliance with its contracting principles include, but are not limited to: wage levels, pay ranges, benefits for all positions and job classifications, medical insurance for employees, annual rate of staff turnover, number of hours of training for each position in subject areas directly related to the contract, number of legal complaints issued by an enforcement agency against the contractor for alleged violations of applicable federal, state or local rules, regulations or laws and the number of citations, court findings or administrative findings for violations of applicable federal, state or local rules, regulations or laws related to treatment of employees or the contractor's fiscal condition, and any collective bargaining agreements or personnel policies covering the contractor's employees.

Agencies/Departments must work with County Counsel to incorporate applicable provisions related to these principles into County contracts. Any violation of these principles by a contractor may be considered a material breach of the contract, and at the option of the County, constitute grounds for the termination or non-renewal of the contract, according to its terms.

### **Wage Theft Prevention**



It is the policy of the County that all parties contracting with the County must comply with all 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 of Santa Clara. A potential contractor that has submitted a formal or informal bid to provide goods and/or services to the County may be disqualified if the potential contractor has been found, by a court or by final administrative action of an investigatory government agency, to have violated applicable wage and hour laws in the five years prior to the submission of a bid to provide goods and/or services. A current contractor found by a court or by final administrative action of an investigatory government agency to have violated applicable wage and hour laws, in the five years prior to or during the term of the contract with the County, may be in material breach of its contract with the County if the violation is not fully disclosed and/or satisfied per County guidelines and contract requirements. Such breach may serve as a basis for contract termination and/or any other remedies available under law, including a stipulated remediation plan.

### **5.5.5.5 Living Wage Provisions in County Contracts (Adopted 12-16-14; Amended 12-13-16)**

#### Basic Wage and Benefit Standards

Employees of County Contractors, and their Subcontractors, who provide Direct Services within the geographic boundaries of Santa Clara County, as part of a County Services Contract, as those terms are defined in the County's Living Wage Ordinance, shall be compensated at least pursuant to the following standards for their work as part of the County Service Contract:





- As of the adoption date of this Policy, \$19.06 per hour shall be a minimum hourly wage, adjusted annually for cost of living using the identical methodology to that used by the City of San Jose, as follows: The rates will be reviewed each year, no later than the 10th of February, to determine if any adjustment should be made based on any change as of December 31st of the previous year in the federal poverty level standard or the geographic cost of living differential provided by the Economic Research Institute's Geographic Assessor. If either standard has changed the County shall recalibrate the wages by multiplying the federal poverty level standard for a family of 3 by said geographic cost of living differential. If neither standard has changed, the Consumer Price Index for all urban consumers (CPI-U) in the San Francisco-Oakland-San Jose regional area (United States Department of Labor, Bureau of Labor Statistics) shall be reviewed. If the CPI-U has increased by at least 1%, the wage rate shall be adjusted by the same percentage change in the CPI but not to exceed 3%.
- Employers who contribute to affordable individual health coverage for the employee shall have \$2.00 credited toward compliance with the minimum wage. Employers who contribute at least \$2.00 per hour to a retirement plan for the employee shall have another separate \$2.00 credited toward compliance with the living wage. Therefore, employers may qualify for none, one, or both credits.
- The resulting living wage is maintained by the Office of Countywide Contracting Management and available for reference online at <http://www.sccgov.org/livingwage>
- Employees shall receive at least one hour of compensated time off earned per 20 hours worked, up to a maximum of 12 days earned per year, which may be used for the employee's own sickness or to care for an ill family member or designated person. If the employee has no spouse or registered domestic partner, the employee may designate one person as to





whom the employee may use compensated time off to aid or care for the person. Paid sick days, paid vacation days, and paid personal days shall count toward the required compensated time off, if those days may be used for such illness situations.

- The employer shall offer paid time off for employees required to report for jury duty, up to at least five days per year.

These Basic Wage and Benefit Standards do not apply to volunteers, interns, on-call and per diem wages, reimbursements by stipend, hourly wages not paid by County Service Contracts, or employees working for less than 5 hours per week as part of the County Service Contract.

### Basic Job Security Standards

Employees of County Contractors, and their Subcontractors, who provide Direct Services within the geographic boundaries of Santa Clara County, as part of a County Services Contract, shall enjoy the following protections at work:

- Employers shall not retaliate against workers who request their rights under the Living Wage Ordinance or Board Policy 5.5.5.5.
- The employer shall follow the same policies regarding background checks and review of possible contact with the criminal justice system that are followed by the County with County employees providing similar services. Specifically, the employer shall not ask an applicant for employment to disclose, orally or in writing, information concerning the applicant's conviction history, including any inquiry about conviction history on any employment application, until the employer has determined the applicant meets the minimum employment qualifications, as stated in any notice for the position. This requirement shall not prevent the employer from



conducting a conviction history background check after determining the applicant meets the minimum employment qualifications. This qualification-assessment-first requirement shall not apply to a position for which the employer is required by law to conduct a conviction history background check, to a position within a criminal justice agency as defined in Section 13101 of the Penal Code, or to any individual working on a temporary or permanent basis for a criminal justice agency on a contract basis or on loan from a governmental entity.

- Employers shall not retaliate against an employee for engaging in lawful efforts to unionize their workforce.

### Limitations of Board Policy 5.5.5.5

This policy will apply only to contracts for Direct Services developed pursuant to a formal Request for Proposals process which is initiated on or after July 1, 2015, or any Formal or Informal Competitive Procurement process which is initiated on or after March 1, 2017.

This policy does not apply to the following types of contracts:

- Contracts with community-based nonprofit contractors. This section of the Policy will be changed by the Board upon review and vetting of a non-profit specific Policy.
- Contracts and grants that provide the County with revenue, or where reimbursement to the contractor is linked to a match from another entity, whether or not the revenue is passed through the County to another entity or utilized directly by the County.
- Compensation contracts with providers who charge the County health system for medical, mental health, and substance abuse services rendered



to clients for whom the County has a legal responsibility to provide reimbursement for services.

- Contracts with other governmental entities.
- Contracts with employees of the County, dependent agencies of the County or their employees.
- Contracts under \$100,000 for the term of the contract, unless the Contract is amended, extended, or renewed, such that the amendment, extension or renewal will result in a total expenditure exceeding \$100,000 for the underlying contract and any amendments, extensions, and renewals, in which case the amended, extended, or renewed contract is a new "Service Contract," as defined in the living wage ordinance, from the date of the amendment, extension, or renewal.
- Contracts with IHSS workers.
- Contracts for "public works" as defined under California Labor Code Sections 1720 and 1720.2, and subject to payment of prevailing wages under the California Labor Code.
- Contracts for which the law prohibits such limitations.

In addition, parties subject to the Living Wage Ordinance and this policy may by collective bargaining agreement provide that such agreement shall supersede the requirements of the Ordinance and this policy.

### **5.5.5.6 Contract Execution**

#### Electronic Signatures



It is the policy of the County to allow the use of electronic signatures in lieu of manual or ink signatures to execute contracts, provided the electronic signatures are appropriate, comply with applicable laws, and have been approved by County Counsel. The type of electronic signature used in the County must be approved by County Counsel and OCCM. This policy applies to all County Agencies/Departments and governs the use of electronic signatures in the County.

### Definition of Electronic Signatures

An electronic signature is an electronic sound (e.g., audio files of a person's voice), symbol (e.g., a graphic representation of a person in JPEG file), or process (e.g., a procedure that conveys assent), attached to or logically associated with a record, and executed or adopted by a person with the intent to sign the record.

### Use of Electronic Signatures

Unless otherwise prohibited by law or County policy, an electronic signature shall have the same force and effect as a contract executed with an original ink signature. Agencies/Departments may use electronic signatures to execute all County contracts and related documents, provided the electronic signatures are appropriate, available, comply with applicable laws, and have been approved by County Counsel.

### Electronic Copies of Signed Contracts

Unless otherwise prohibited by law or County policy, an electronic copy of a signed contract shall have the same force and effect as a contract executed with an original ink signature. The term "electronic copy of a signed contract" refers to a transmission by facsimile, electronic mail, or other



electronic means of a copy of an original signed contract in a portable document format.

### Guidelines and Procedures

Administration may develop guidelines and procedures and provide training related to the use of electronic signatures and electronic copies of signed contracts in the County. These guidelines and procedures should include adequate controls to ensure integrity, security, confidentiality and accountability in the process and to eliminate or reduce abuse and unauthorized actions. Agencies/Departments are responsible for ensuring that County contracts include a provision reflecting this policy, where applicable.

### **5.5.6 Applicable Legal Authority**

The applicable legal authority for this Section includes but is not limited to the following:

Davis-Bacon and Related Acts

California Labor Code Section 1771 et. seq.

### **Related Policies**

- No Smoking Policy - Board Policy Manual 3.47 – <https://saecommon.sccgov.org/countypolicy/Board-Policy-3.47-No-Smoking-Policy.pdf>
- Ordinance Code Division B36 – Living Wage - [https://www.municode.com/library/ca/santa\\_clara\\_county/codes/code\\_of\\_ordinances?nodeId=TITBRE\\_DIVB36LIWA](https://www.municode.com/library/ca/santa_clara_county/codes/code_of_ordinances?nodeId=TITBRE_DIVB36LIWA)



### **Related Forms and Information**

- Procurement Department's Contracting for Professional Services Resources site -  
<http://eportal.sccgov.org/sites/proc/resources/Pages/ContractingforPros.pdf>
- March 13, 2019 Memo - Fiscal Year 2020 Living Wage Rate Adjustments -  
[url]/sites/policies/FormsrelatedtoPolicies/Fiscal-Year-2020-Living-Wage-Rate-Adjustments-Memo.pdf
- March 26, 2018 Memo - Fiscal Year 2019 Living Wage Rate Adjustments -  
[url]/sites/policies/FormsrelatedtoPolicies/Fiscal-Year-2019-Living-Wage-Rate-Adjustments-Memo.pdf
- March 9, 2018 Memo - Updates on Solicitation Language and Provisions to Santa Clara County Contracts –  
[url]/sites/policies/FormsrelatedtoPolicies/Memo-Updates-to-Solicitation-Language-and-Provisions-030918.pdf
- April 11, 2017 Memo - Fiscal Year 2018 Living Wage Rate Adjustments –  
[url]/sites/policies/FormsrelatedtoPolicies/Fiscal-Year-2018-Living-Wage-Rate-Adjustments-Memo-041117.pdf
- February 1, 2016 Memo – Countywide Contracting Updates -  
[url]/sites/policies/FormsrelatedtoPolicies/Countywide-Contracting-Updates-20216.pdf
- June 16, 2015 Memo - Phased Elimination of Dependent Contractors  
[url]/sites/policies/FormsrelatedtoPolicies/Memo-Phased-Elimination-of-Dependent-Contractors.pdf



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- Service Agreement Amendment Form -  
[url]  
/sites/forms/proc/ProcurementCountywideForms/Service%20Agreement%20Amendment%20Form.pdf
- Service Agreement Checklist -  
[url]  
/sites/forms/proc/ProcurementCountywideForms/Service%20Agreement%20Checklist.pdf
- Service Agreement Form -  
[url]  
/sites/forms/proc/ProcurementCountywideForms/Service%20Agreement.pdf

### History

Date	Changes Made
3/14/2017	Policy Amended (Effective 9/15/2017). <a href="#">View legislative file.</a>
12/13/2016	Policy Amended. <a href="#">View legislative file.</a>
11/17/2015	Policy Amended. <a href="#">View legislative file.</a>
12/16/2014	Policy Amended. <a href="#">View legislative file.</a>
11/4/2014	Policy Amended. <a href="#">View legislative file.</a>