



SAN DIEGO COUNTY
REGIONAL AIRPORT AUTHORITY
STAFF REPORT

Item No.
18

Meeting Date: **NOVEMBER 4, 2010**

Subject:

Board Discussion Regarding Policies Relating to Contractor Worker Retention

Recommendation:

To provide direction to staff on a policy relating to contractor worker retention.

Background/Justification:

The Authority will be soliciting responses for several major contracting opportunities in the near future, including a new model for the Airport's concessions program. In response to inquiries by Board members, staff was asked to research various programs created to encourage retention of employees hired by contractors who work on Airport premises. The following is a chronological sequence of what has transpired to date:

On April 1, 2010, Authority staff provided an overview of information after surveying entities that have established policies on contractor worker retention, contractor health benefits and/or compensation packages. (See Exhibit A – Staff Report dated April 1, 2010.) After some discussion, staff was directed by the Board to return with specific options for the Board's consideration.

On July 1, 2010, Authority staff presented common approaches and rationales intended to provide Board Members with a conceptual perspective related to the following options:

Option 1	<u>Worker Retention Program</u> – Provides worker retention for existing employees currently working on SDIA premises.
Option 2	<u>Provision of Employee Health Benefits</u> – Rewards employers who provide employee health benefits with significant points during the contract evaluation process.
Option 3	<u>Increased Wages or Provision of Employee Health Benefits</u> – Ensures that employers provide employees with health benefits or eligible employees earn an amount over minimum wage in lieu of health benefits.
Option 4	<u>No change to current policy.</u>

The first three options included conceptual information as to the purpose, general provisions, implications and additional considerations of each program, in addition to cited examples of common approaches based on ordinances reviewed. (See Exhibit B – Staff Report dated July 1, 2010.)

Staff also provided information gathered from a survey of other airports. (See Exhibit C – Survey Results of Existing Programs.) A motion was approved by the Board which directed staff to create a policy related to worker retention for the Authority for the Board's consideration and to schedule a workshop in regards to the new concessions program.

On September 2, 2010, Authority staff returned with a policy for consideration. (See Exhibit D – Staff Report dated September 2, 2010, and Exhibit E – Policy 9.40 Contractor Worker Retention.) After additional discussion, the policy was neither approved nor amended. Staff was asked to continue seeking additional input and direction from the Board at a future Board Meeting.

In an effort to engage and support the Board in this decision process, staff will facilitate a discussion at the November meeting regarding policy considerations related to contractor worker retention. Staff is circulating Exhibit F which outlines both the discussion strategy and the major decision points for consideration in contemplating the factors to be included in any proposed policy.

Fiscal Impact:

Potential costs identified include increased costs for affected service contracts and additional staff and administrative costs related to compliance monitoring. Specific costs have not been determined as they will be a result of the type and nature of the policy developed.

Environmental Review:

A. CEQA Review: This Board action, as an administrative action, is not a project that would have a significant effect on the environment as defined by the California Environmental Quality Act ("CEQA"), as amended. 14 Cal. Code Regs. §15378. This Board action is not a "project" subject to CEQA. Cal. Pub. Res. Code §21065.

B. California Coastal Act Review: This Board action is not a "development" as defined by the California Coastal Act. Cal. Pub. Res. Code §30106.

Equal Opportunity Program:

Not applicable

Prepared by:

JANA VARGAS
DIRECTOR, PROCUREMENT



**SAN DIEGO COUNTY
REGIONAL AIRPORT AUTHORITY
STAFF REPORT**

Item No.

12Meeting Date: **APRIL 1, 2010****Subject:**

Board Policy Discussion Regarding Policies Relating to Contractor Worker Retention And Wages/Benefits

Recommendation:

To seek direction from the Board on policies relating to contractor worker retention and wages/benefits.

Background/Justification:

In the near future, the Authority will be soliciting responses for several major contracting opportunities. In response to increasing inquiries regarding policies relating to issues such as worker retention and wages/benefits, staff is seeking Board direction as to whether these subjects should be included in the Authority's contracting policies and requirements.

In anticipation of a Board discussion on this topic, Authority staff surveyed government entities that have established policies on retention and/or health benefits and compensation packages. Responses were received from the Cities of San Diego, Irvine, Santa Cruz, Santa Barbara, San Leandro, Oxnard and Los Angeles as well as Ventura County and the Port of San Diego.

Employee Retention Programs

In addition to instances of compliance with the Janitorial Displacement Act (see below), staff found examples of local agencies that have established an employee retention program requiring a new contractor to hire existing employees working at a particular job site.

Under the Janitorial Displacement Act, janitors who are employed at a specific site through a contractor have the option of remaining at that site even if the contract is awarded to a new contractor. The new contractor is required to offer the existing employees a job servicing the same site. The janitor has the option of accepting or refusing the new job offer. The Janitorial Displacement Act does not apply to supervisors or management positions.

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Staff's survey found specific ordinances regarding worker retention in Los Angeles, San Jose and Santa Cruz. The City of Los Angeles has established a Service Contractor Worker Retention Ordinance (WRO) (No. 171004). Under this ordinance, new contractors are required to retain existing contractor employees assigned to a particular job site for a 90 day transition period. At the end of 90 days, offers of employment are dependent on an employee's performance review. Wrongful termination of an existing employee is prohibited.

Another example of a WRO is that adopted by the San Jose Airport (Ordinance No. 28432). Under this Ordinance the predecessor employer is required to provide the Office of Equality Assurance with a qualified displaced worker list containing the names and contact information for all retention employees. No less than thirty days prior to the termination of the predecessor employer's contract, all retention employees shall be notified in writing that they will be placed on a qualified displaced worker list. The notification letter shall detail the worker retention process and timeline and include a phone number and contact person at the Office of Equality Assurance. The successor employer subject to the WRO shall offer employment to all retention employees. This ordinance allows the successor employer to treat any of its current employees as retention employees if they have been employed for at least six months prior to the date of the new contract and are not eligible for continued employment by the successor employer other than at the airport. In the event that the successor employer does not have enough positions available for all retention employees and its current employees eligible for retention, the successor shall retain and hire employees based on seniority within each employment classification.

The City of Santa Cruz adopted a Living Wage Ordinance in 2000 which also addresses Employee Retention for service contracts greater than \$50,000. Under Ordinance 2000-25, Chapter 5.10 of the Municipal Code, a subsequent employer shall offer employment to defined "retention employees" who are qualified for such jobs. The subsequent employer may not terminate a retention employee for the first ninety days of employment under the successor contract, except for cause.

Living Wage Ordinance

"Living Wage" ordinances (LWOs) have been created by local government entities to define wage and benefit levels consistent with the community's cost of living. These ordinances require a contractor entering into a covered contract with the government entity to pay its covered employees an hourly rate, comparable health benefits and paid time off at an established minimum set by the government entity (See Attachment A).

The following are examples of services that staff's survey indicated are most often covered by LWOs:

- Facility maintenance and repair services
- Food services
- Cashiers
- Janitorial and custodial services
- Landscaping

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Laundry services
Pest control
Towing
Automotive repair and maintenance
Temporary services
Office/derical services

The following are examples of services that staff's survey indicated are most often exempted from LWOs:

Contracts subject to Federal and State law wage requirements
Contracts for services by other governmental agencies
Contracts for services with a non-profit organization
Cooperative procurement contracts
Contracts for professional services

Other criteria that may further impact LWO applicability are: the total annual expenditures, contract duration, estimated weekly or monthly hours assigned to the agency, small business exemptions, contractor's existing employee base, supervisors and management, collective bargaining agreements and criteria shown to be in the best interest of the awarding government entity.

Health Benefits

LWOs reviewed by Authority staff addressed health benefits by establishing two different minimum compensation rates: one rate with health benefits and a second rate where health benefits are not provided. For example, the LWO for the City of San Diego requires a minimum hourly pay of \$11.00/hour plus \$2.20/hour in health benefits or \$13.20/hour without health benefits. In addition to the minimum hourly pay, the LWO requires employers to provide covered employees with a minimum of 10 paid days for vacation, sick leave or other personal need and 10 unpaid days for personal or family illness. These days are in addition to paid holidays (see attachment A). These rates and benefits are similar to other California agencies that have passed an LWO. Of all the entities that have an LWO in effect responding to the survey, none required specific health benefits. Instead, an offset is added to the living wage value if there are no benefits offered.

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Legal Implications

Worker Retention Ordinances. Only one California case has addressed the legality of a worker retention ordinance promulgated by a local governmental entity. The decision, California Grocers Assoc. v. City of Los Angeles (2009) 176 Cal. App. 4th 51 (*not to be cited pending appeal*), invalidated a City of Los Angeles worker retention ordinance requiring purchasers of large grocery stores to employ the prior store's (the seller's) workforce for 90 days. The California Court of Appeal held that the ordinance was preempted by the National Labor Relation Act [29 U.S.C. §151 *et seq.*] and the California Retail Food Code [Cal. Health & Safety Code §§113947 *et al.*, 114047 *et al.*, and 114095 *et al.*]. The decision has been appealed to the California Supreme Court and therefore cannot be cited as legal authority. This ordinance in question does not involve a local governmental agency regulating how *it* contracts, but rather mandates the retention of employees where there is a sale between two private parties of larger non-union grocery stores. The "grocery store" WRO before the Supreme Court contains requirements different and distinguishable from other city WROs, the latter WROs limiting their application solely to contracts between a city and an affected contractor providing services to a city under a public contract who is receiving public funds.

Living Wage Ordinances. The two California reported case decisions involving LWOs reflect that properly drafted and enforced LWOs are valid and constitutional. In Amaral v. Cintas Corporation (2008) 163 Cal. Ap. 4th 1157, 78 Cal. Rptr. 3d 572, a California appellate court upheld the City of Hayward's LWO, ruling (1) it was a proper exercise of the City's contracting and proprietary powers as distinguished from an exercise of its police power, and (2) it complied with due process and was not unconstitutionally vague. A second California appellate case, Agular v. Superior Court (2009) 170 Cal. App. 4th 313, 87 Cal. Rptr. 3d 813, while invalidating an implementing regulation of a City of Los Angeles' LWO, did not hold that the LWO was itself unconstitutional or illegal. Other cases indirectly support the conclusion that a carefully worded and narrowly drafted LWO is a proper exercise of a local government's contracting power and right to set appropriate contract terms and conditions.

Agency Considerations

Establishing an Employee Retention of Living Wage program will require the Authority to have in place appropriate processes to monitor contract compliance. This could be accomplished with either Authority staff or a third party contract. Regardless of the method used to accomplish this oversight, it will result in additional costs to the Authority.

In addition, increased costs of doing business with the Authority under the terms of such a program could reduce competition for Authority contracts by limiting the pool of respondents willing or able to meet the contracting requirements.

Fiscal Impact:

Potential costs identified include increased costs on affected service contracts and additional costs related to compliance monitoring.

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Environmental Review:

A. CEQA Review: This Board action, as an administrative action, is not a project that would have a significant effect on the environment as defined by the California Environmental Quality Act ("CEQA"), as amended. 14 Cal. Code Regs. §15378. This Board action is not a "project" subject to CEQA. Cal. Pub. Res. Code §21065.

B. California Coastal Act Review: This Board action is not a "development" as defined by the California Coastal Act. Cal. Pub. Res. Code §30106.

Equal Opportunity Program:

Not applicable.

Prepared by:

JEFFREY WOODSON
VICE PRESIDENT, ADMINISTRATION

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LIVING WAGE ORDINANCE



ORDENANZA DEL SUELDO DIGNO

NOTICE TO EMPLOYEES

This employer is a contractor with the City of San Diego. This contract is subject to the Living Wage Ordinance. You must be paid "a living wage" for any hours you work on this contract.

THESE ARE YOUR RIGHTS

MINIMUM HOURLY PAY:

- \$11.00/hour plus at least \$2.20/hour in health benefits **OR**
- \$13.20/hour without health benefits.
 - If health benefits cost less than \$2.20/hour, the difference is added to the hourly wage.
 - Rates are adjusted annually; current rates are effective until June 30, 2011.

MINIMUM DAYS OFF PER YEAR:

- 10 paid days for vacation, sick leave, or other personal need **AND**
- 10 unpaid days for personal or family illness.
 - Days off are in addition to paid holidays.
 - Days off are pro-rated based on hours worked at the living wage rate.

RETALIATION IS PROHIBITED:

- Employers may not fire, reduce pay or discriminate against a worker for filing a complaint.

FOR MORE INFORMATION

For more information or to obtain a complaint form if you believe your rights are being violated, please contact:

AVISO PARA EMPLEADOS

Este empleador es contratista de la Ciudad de San Diego. Este contrato está sujeto a la Ordenanza del Sueldo Digno. Usted debe ser pagado "un sueldo digno" por cada hora trabajada bajo este contrato.

ESTOS SON SUS DERECHOS

COMPENSACIÓN MÍNIMA POR HORA:

- \$11.00/hora más un mínimo de \$2.20/hora de prestaciones médicas **O**
- \$13.20/hora sin prestaciones médicas.
 - Si las prestaciones médicas cuestan menos de \$2.20/hora, la diferencia es añadida al salario.
 - El sueldo se ajusta anualmente; el sueldo actual tiene vigencia hasta Junio 30, 2011.

DÍAS LIBRES MÍNIMO CADA AÑO:

- 10 días pagados para vacaciones, enfermedad, o razones personales **Y**
- 10 días sin pagar por enfermedad personal o familiar.
 - Días libres son adicionales a los días festivos.
 - Días libres son ajustados por horas trabajadas al sueldo digno.

SE PROHIBE CUALQUIER TIPO DE REPRESALIA:

- Los empleadores no pueden despedir, reducir la paga, ni discriminar contra un trabajador por presentar una queja.

PARA MAYOR INFORMACIÓN

Para más información o para obtener un formulario de quejas si usted considera que sus derechos han sido violados, por favor llame:

LIVING WAGE PROGRAM
ADMINISTRATION DEPARTMENT, CITY OF SAN DIEGO
 202 C Street, MS 9A, San Diego, CA 92101
 Phone (619) 238-6682 Fax (619) 533-3240

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**SAN DIEGO COUNTY
REGIONAL AIRPORT AUTHORITY
STAFF REPORT**

Item No.
16

Meeting Date: JULY 1, 2010

Subject:

Board Policy Discussion and Possible Direction Regarding Policies Relating To Contractor Worker Retention and Wages/Benefits

Recommendation:

To seek direction from the Board on policies relating to contractor worker retention and wages/benefits.

Background/Justification:

The Authority will be soliciting responses for several major contracting opportunities in the near future. At the April 1, 2010, Board meeting, staff presented general information regarding contractor worker retention programs, living-wage ordinances and wage/benefits programs. Following that presentation, the Board directed staff to return with information and options – including an option to not make policy changes.

The establishment of worker retention and wage/benefit requirements at the airport aims to protect the public health, safety and welfare of the traveling public by promoting business continuity, employee health, decreasing worker turnover and increasing stability in the workplace. A number of airports nationally and in California that are going through similar contract transitions have implemented programs regarding worker retention and wage/benefits. (See Attachment A)

Staff reviewed several programs addressing contractor worker retention, wages and health benefits applied to low-paying labor contracts. There are unique variables in every program. The options presented include common approaches and rationales to address specific considerations and are intended to provide the Board with a conceptual perspective.

Option 1	Worker Retention Program – Provides worker retention for existing employees currently working on SDIA premises.
Option 2	Provision of Employee Health Benefits – Rewards employers who provide employee health benefits with significant points during the contract evaluation process.
Option 3	Increased Wages or Provision of Employee Health Benefits – Ensures that employers provide employees with health benefits or eligible employees earn an amount over minimum wage in lieu of health benefits.
Option 4	No change to current policy.

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All of the options presented for Contractor Worker Retention and Wage/Benefits Programs are applicable to "low-paying labor contracts." Examples of covered service contracts may include:

- parking
- facility maintenance and repair services
- food services
- cashiers
- janitorial and custodial services
- landscaping
- laundry services
- pest control
- towing
- automotive repair and maintenance
- temporary services
- office/clerical services

Option 1: Worker Retention Program

Purpose: The purpose of a worker retention program is to create a work environment that promotes job security among contractors' employees and maintains the Authority's interest in continuous operations of airport services. Incumbent workers have invaluable knowledge and experience with work schedules, practices and clients at the Airport. Retaining existing service workers when a change in contractors occurs reduces the likelihood of labor disputes and disruptions while resulting in the continuity of services. Service continuity promotes a positive experience for the traveling public.

General Information: In order to provide a Worker Retention Program, the Authority would need to establish, update and maintain processes and decide on staffing and/or oversight for the following:

1. Retention Eligibility
2. Employee Notification
3. Transition Procedures
4. Exemptions
5. Employment Offers
6. Complaints
7. Enforcement and Remedies

Implications: The Authority would need to establish a monitoring mechanism, whether it is in-house or outsourced, that would assume the duties required to implement, update and maintain a Worker Retention Program. This mechanism would be responsible for the employee transition to employment with a new contractor, including but not limited to ensuring adequate employee notifications are received by existing employees, approving or denying exemption requests submitted by new contractors and investigating employee complaints regarding the transition.

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Additional Considerations: Some additional costs would be incurred by the Authority to administer a Worker Retention Program. Additional administration costs and labor dispute risks would also be assumed by the new contractor. A Worker Retention Program may discourage businesses from participating in the solicitation process – especially small businesses trying to maintain an existing work force.

Example: Staff reviewed sample Worker Retention Programs provided by the California cities of Los Angeles, San Jose (ordinance specific to Airport operations only) and Santa Cruz. The example cited below is being provided as a general overview of common processes embedded in the ordinances reviewed.

- Prior to the termination of a predecessor employer's contract, the predecessor employer would provide the Authority a detailed list of existing employees that are eligible for retention.
- The successor employer may treat any of its current employees as retention employees where reliable evidence approved by the Authority shows that the successor's employee would not be eligible for continued employment by the successor employer other than at the airport.
- Prior to the termination of a predecessor employer's contract, all eligible retention employees would be notified in writing that they have been placed on the retention employees list and that the successor employer will be required to contact him or her regarding continued employment at the airport. The notification would include details of the transition process, employee rights under the program and appropriate contact information of both an Authority-designated representative and the successor's representative.
- The successor employer would extend offers to those employees on the retention list. In the event that the successor employer does not have enough positions available for all retention employees, the successor would hire retention employees based on seniority within each job classification.
- The successor employer would not be allowed to discharge a retention employee without cause during the initial 90-day period of his or her employment and would be required to offer continued employment to each retention employee who receives a satisfactory performance evaluation at the end of the initial ninety 90-day period.

Option 2: Provision of employee health benefits

Purpose: The purpose of encouraging the provision of health benefits to employees of Authority contractors is to create a safe and healthy work environment for all Airport employees and provide opportunities for preventive medical care to ensure a healthier workforce. Also, health benefits can incent employees to seek medical attention and take time off when ill, which would improve the employee's health as well as reduce the exposure to germs of passengers and other workers at the Airport.

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General Information: To implement a policy rewarding the provision of employee health benefits to employees of contractors, the Authority would conduct Requests for Proposals (RFPs) for all contracts identified by the Authority as low-paying labor contracts and award a significant points to proposers that offer their employees health benefits. For this option, "significant points" equates to enough points to affect the award outcome for an employer offering benefits to its employees.

Implications: Weighted evaluation criteria would need to be used for all low-paying labor RFPs. The Authority would establish a process to validate health care benefits offered by contractors to employees prior to making a contract award recommendation.

Additional Considerations: There is no viable option or consideration for small or veteran businesses that do not offer health care benefits as part of their employment package. Depending on the points awarded, this could discourage small and veteran businesses from participating. This option could also increase contract processing time and costs. However, additional Authority staff time required to manage this option is minimal.

Example: The Port of San Diego uses a weighted evaluation process that awards a total of 400 points. The following additional points are awarded as a part of each service contract evaluation:

- 80 additional points are awarded to contractors who pay for at least 75% of their employees' health care benefits (significant points equal to primary weighted criteria)
- 40 additional points are awarded to contractors who pay for at least 50% of their employees' health care benefits.
- 5 additional points are awarded to Small Business Enterprises
- 5 additional points are awarded to Veteran Business Enterprises

The Authority uses a 100 point weighted criteria. Using the same concept as the Port of San Diego, the Authority could offer up to an additional 20 points for proposers that offer employee health benefits. With up to a 20% bonus for such a program, proposers offering health benefits would have a significant advantage.

Option 3: Increased wages or provision of employee health benefits

Purpose: The purpose of requiring contractors to provide health care benefits to employees or increasing the wages of employees working at the Airport to level the contracting costs for bidders competing for Authority contracts. Provisions such as employee health benefits and increased wages (in lieu of benefits) tend to decrease worker turnover and promote workplace stability and employee satisfaction.

General Information: For contracts identified by the Authority as "low-paying labor contracts", the Authority would require that contractors provide employee health benefits or a payment of a predetermined amount per hour above minimum wage in lieu of employee health benefits, for all employees assigned to work on Authority contracts. Assigned contract employees are generally defined as contractor employees working at least 20 hours per week or 80 hours per month on the premises of San Diego International Airport.

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Implications: The Authority would need to establish a process to validate employee health benefits and audit payroll annually for all employees working on contracts defined by the Authority as a low-paying labor contract. A payroll audit would include validation of assigned employees and an annual certified payroll audit.

Example: Authority staff surveyed government entities that have established policies on health benefits and compensation packages. Responses were received from the California cities of San Diego, Irvine, Santa Cruz, Santa Barbara, San Leandro, Oxnard, Long Beach and Los Angeles as well as Ventura County. Most, but not all, of these entities have established a living wage in addition to the amount above the established wage in lieu of health benefits.

The current minimum wage in the State of California is \$8.00 per hour. Contracts identified as low-paying labor contracts would be required to submit a list of all employees working on-site at the Airport along with certified payroll records for the employees identified. The information would be requested and verified by Authority staff or a third party contractor on an annual basis. In this option, all employees would receive employer-paid health benefits or earn a pre-determined amount above the established minimum wage per hour. Contractors that do not comply with this requirement would not be eligible for Authority contracts.

Option 4: No change to current policy

Under this option, there would be no changes to Authority contracting policies regarding worker retention or contractors' employees health benefits and/or wages.

Fiscal Impact:

Potential costs identified include increased costs on affected service contracts and additional costs related to compliance monitoring. Cost estimates have not been determined at this time. A more robust cost analysis will be performed once staff receives direction from the Board.

Environmental Review:

- A. This Board action, as an administrative action, is not a project that would have a significant effect on the environment as defined by the California Environmental Quality Act ("CEQA"), as amended. 14 Cal. Code Regs. §15378. This Board action is not a "project" subject to CEQA. Pub. Res. Code §21065.
- B. California Coastal Act Review: This Board action is not a "development" as defined by the California Coastal Act. Pub. Res. Code Section 30106, 30108.6, and 30109.

Equal Opportunity Program:

Not applicable.

Prepared by:

JANA VARGAS
DIRECTOR, PROCUREMENT

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Attachment A

Airport	Worker Retention Policy	Notes
Los Angeles , CA (LAWA - LAX, ONT, PLM, VNY)	X	Low wage earners
San Francisco, CA (SFO)	X	Specified concession related contracts only
Oakland, CA (OAK)	X	Airport/Port - Concessions Only
San Jose , CA (SJC)	X	Specified Airport Contracts only (concession and curbside)
Phoenix, AZ (PHX)	X*	*Applied as criteria in Food and Beverage concession RFP for Terminal 4.
Long Beach, CA (LGB)		
Houston, TX (QHO)		
Ft. Lauderdale (FLL)		
Seattle, WA (SEA)	X*	* Concessions - Tier II Prime Concessionaires only
Miami, FL (MIA)		Living Wage Ordinance; County Ordinance 2/6/07 required concessions proposers to submit a Labor Peace Agreement
New York/New Jersey Authority (JFK, LGA, SWF, EWR, TEB)	X*	*A "Harmony Clause" included in standard contract terms. Required a "Labor Peace Agreement" and Worker Retention for concessions by Board Resolution 10/18/07.
Cleveland, OH (CLE)	X*	*City Ordinance passed 4/2/07 requires Union Participation as an RFP consideration and Worker Retention as an agreement condition for concessions
Hartford, CT (BDL)	X*	*State House Bill approved 6/13/02 required Worker Retention for food and beverage contracts only
Sacramento, CA (SMF)		
Orange County, CA, (SNA)		
Louisville, KY (SDF)		
Cincinnati/N.KY International (CVG)		
Minneapolis/St. Paul, MN (MSP)		
Portland, OR (PDX)		
Norfolk, VA (ORF)		
Salt Lake City, UT (SLC)		
Memphis, TN (MEM)		
Dayton, OH (DAY)		

Nashville, TN (BNA)		
Jackson, MS (JAN)		
Milwaukee, WI (MKE)		*Not confirmed; no official policy, but labor peace achieved during concession turnover according to Unite Here
Providence, RI (PVD)	X*	*Not confirmed; concessionaire retained workers in 2006 according to Unite Here; no documentation provided
Philadelphia, PA (PHL)	X	City Ordinance applies to food and beverage, hotel services, health care, janitorial and building maintenance.
Charlotte, NC (CLT)		
Atlanta, GA (ATL)		*Not confirmed; Labor Harmony was attained in 2007 for concessions and is currently considering a policy according to Unite Here; no documentation provided
Chicago, IL (ORD, MDW)		*Not confirmed; Labor Peace is being considered for upcoming O'Hare concessions and was written into the enabling legislation for the Midway privatization proposal according to Unite Here; no documentation provided

Sources:

Airports Council International – North America (ACI)

California Airports Council

Staff Research

Unite Here

Airports with Worker Retention Policies/Ordinances

Airport	Worker Retention Policy
Los Angeles , CA (LAWA - LAX, ONT, PLM, VNY)	X
San Francisco, CA (SFO)	X
Oakland, CA (OAK)	X
San Jose , CA (SJC)	X
Phoenix, AZ (PHX)	X
Seattle, WA (SEA)	X
New York/New Jersey Authority (JFK, LGA, SWF, EWR, TEB)	X
Cleveland, OH (CLE)	X
Hartford, CT (BDL)	X
Providence, RI (PVD)	X
Philadelphia, PA (PHL)	X

Sources:

Airports Council International – North America (ACI)

California Airports Council

Staff Research

Unite Here

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SAN DIEGO COUNTY
REGIONAL AIRPORT AUTHORITY
STAFF REPORT

Item No.
22

Meeting Date: **SEPTEMBER 2, 2010**

Subject:

Approve Policy 9.40 "Worker Retention for Employees of Contractors and Subcontractors Providing Services at San Diego International Airport"

Recommendation:

Adopt Resolution No. 2010-0100, approving Policy 9.40 "Worker Retention for Employees of Contractors and Subcontractors Providing Services at San Diego International Airport".

Background/Justification:

The Authority will be soliciting responses for several major contracting opportunities in the near future. Contract awards are made after the completion of a competitive solicitation. Competition potentially results in the award of new contracts to a different service provider/contractor. These new contracts often involve anticipated changes in managerial skills, new technology, new techniques, new themes or lower costs. Although the competitive process and resulting contract award may result in desired changes, such changes do not necessarily require to the replacement of workers presently performing services. Incumbent workers have invaluable knowledge and experience with Airport schedules, practices and clients. Incumbent workers have also received Airport security and safety training and successfully passed some level of screening in order to receive their badge. The Authority recognizes the value and knowledge of the existing workforce provided by contractors at San Diego International Airport (SDIA).

At the April 1, 2010 and the July 1, 2010 Board Meetings, staff presented information regarding contractor worker retention programs, living-wage ordinances and wage/benefits programs. Staff was directed to return with a draft policy addressing worker retention for employees of contractors providing services at SDIA.

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Staff reviewed several policies and ordinances from other entities and jurisdictions including, but not limited to, policies governing airport operations in Los Angeles, San Francisco, Oakland, San Jose, Miami, Philadelphia and Seattle. Some of the worker retention policies reviewed specifically covered concessions and curbside services only, while others addressed all "low-wage" contract services. This policy is designed to provide worker retention for low-wage earning employees of contractors and subcontractors that have established a work history providing services at SDIA.

Fiscal Impact:

Costs identified include transition oversight and compliance monitoring by an internal or external designee. In addition, contractors' proposed fees may be higher if the contractors pass the costs of worker retention on to the Authority in their responses to solicitations. Cost estimates have not been determined at this time.

Environmental Review:

A. This Board action is not a project that would have a significant effect on the environment as defined by the California Environmental Quality Act (CEQA) as amended. 14 Cal. Code Regs. Section 15378. This Board action is not a "project" subject to CEQA. Pub. Res. Code §21065.

B. California Coastal Act Review: This Board action is not a "development" as defined by the California Coastal Act. Pub. Res. Code § 30106.

Equal Opportunity Program:

Not Applicable.

Prepared by:

JANA VARGAS
DIRECTOR, PROCUREMENT

SAN DIEGO COUNTY REGIONAL AIRPORT AUTHORITY
POLICIES

- ARTICLE 9 - SAN DIEGO INTERNATIONAL AIRPORT**
PART 9.4 - WORKER RETENTION
SECTION 9.40 - WORKER RETENTION FOR EMPLOYEES OF CONTRACTORS AND SUBCONTRACTORS PROVIDING SERVICES AT SAN DIEGO INTERNATIONAL AIRPORT
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PURPOSE: The establishment of a worker retention policy for specified employees of contractors and subcontractors currently working on San Diego International Airport ("Airport") premises serves to protect the public safety and welfare of the traveling public by promoting business continuity, decreasing worker turnover and increasing stability in the workplace. Retaining existing service workers creates a work environment that promotes job security among contractors' employees and maintains the interest of the San Diego County Regional Airport Authority (the "Authority") in continuous operation of Airport services.

POLICY STATEMENT:

1. **Overview:** The Authority utilizes a competitive solicitation process to award Authority service contracts. The competitive process potentially results in the award of a new contract to a different service provider or contractor. A new contract may involve anticipated changes in managerial skills, new technologies, new techniques, new themes or lower costs. Despite changes resulting from the award of a new contract, the changes do not necessarily require the replacement of the workers presently performing services under the contract being replaced. ("Incumbent workers"). Incumbent workers possess valuable knowledge of and experience with Airport schedules, practices and clients. Incumbent workers have received Airport security and safety training, possess Airport badges, and have passed some level of security screening in order to receive their badges. The Authority recognizes the value, experience and knowledge of incumbent workers at the Airport.
2. **Definitions:** The following definitions shall have the meanings set forth herein and shall apply to this policy.
 - a. "Contractor" means any person, corporation, partnership, limited liability company, joint venture, sole proprietorship, association, trust or other entity that currently employs individuals at the Airport or is a party to a service contract with the Authority, including subcontractors of the Contractor who employ individuals or provide services at the Airport under a service contract held by the Contractor.

- b. **"Covered Retention Employee"** means a service employee of a Contractor or subcontractor that meets all of the following criteria:
 - i. Is at least eighteen (18) years of age; and
 - ii. Is employed as a service employee of a Contractor or subcontractor whose primary place of employment is the Airport and who performs services related to a food and beverage concession, retail concession, janitorial contract, security guard contract, parking management, shuttle ground transportation, curbside assistance, maintenance, or clerical work; and
 - iii. Expends at least fifteen (15) hours per week or seventy-five (75) hours per month, whichever is greater, providing services at the Airport for at least the six (6) months immediately preceding the award of a Replacement Service Contract; and
 - iv. Earns less than fifteen dollars (\$15.00) per hour in salary or wages, excluding gratuities; and
 - v. Is not a person who provides volunteer services that are uncompensated except for reimbursement of expenses such as meals, parking or transportation; and
 - vi. Is not a student intern or a participant in a job training and education program; and
 - vii. Is not a manager; and
 - viii. Is not a person required to possess an occupational license; and
 - ix. Is not a confidential employee as defined by the Authority.
 - c. **"Replacement Service Contract"** means a contract where the services to be performed are substantially similar to a Service Contract that has been terminated in the last ninety (90) days.
 - d. **"Replacement Service Contractor"** means any person, corporation, partnership, limited liability company, joint venture, sole proprietorship, association, trust or other entity that may employ individuals or enter into a Replacement Service Contract with the Authority. Replacement Service Contractor includes subcontractors.
 - e. **"Service Contract"** means a contract let to a Contractor by the Authority for the furnishing of services at the Airport that involves expenditures by the Authority or the payment of gross receipts to the Authority in excess of fifty thousand dollars (\$50,000) and a contract term of at least twelve (12) months.
3. **Application:** The worker retention requirements set forth in this Policy apply to all Service Contracts.
4. **Transition:**
- a. Prior to the termination or expiration of a Service Contract, the current Contractor shall receive a written notice from the Authority requiring the current Contractor to provide a written list of eligible Covered Retention Employees. The list shall contain the following information for each Covered Retention Employee: name, contact information, job title and/or classification, term of employment with the Contractor, and amount of time

employed at the Airport. The Contractor is required to provide this information within ten (10) business days after receipt of the written notice by the Authority.

- b. Pre-established, nondiscriminatory hiring criteria can be used by the Replacement Service Contractor for each potential job classification, including but not limited to drug testing and security clearances. The nondiscriminatory hiring criteria must be approved in advance by the Authority.
- c. Where Covered Retention Employees are eligible for employment by Replacement Service Contractors, pools shall be created consisting of Covered Retention Employees as described below:
 - i. Covered Retention Employees shall be included in the pool and their job classification/designation within the pool shall be based upon performance of similar duties regardless of titles used under the Replacement Service Contract;
 - ii. Seniority in the pool shall be based upon the Covered Retention Employees total length of service at the Airport.
- d. In the event the Replacement Service Contractor requires specialized experience or skill not available within the Covered Retention Employee pools, the Replacement Service Contractor shall obtain written approval from the Authority for exemption of such positions from being filled by Covered Retention Employees.
- e. The Replacement Service Contractor may continue to employ any of its current employees where reliable evidence approved by the Authority shows that the Replacement Service Contractor's current employees would not be eligible for continued employment by the Replacement Service Contractor other than at the Airport.
- f. Prior to the termination of a Service Contract, all eligible Covered Retention Employees will be notified by their current employer that they have been placed on the retention employees list and that the Replacement Service Contractor will be required to contact them regarding continued employment at the Airport. Replacement Service Contractor will notify all Covered Retention Employees regarding details of the transition process and employee rights under this Policy.
- g. The Replacement Service Contractor shall extend employment offers, valid for a minimum of five (5) business days, to those Covered Retention Employees on the retention list for which job positions are available in accordance with this Policy. In the event that the Replacement Service Contractor does not have enough positions available for all qualified Covered Retention Employees, the Replacement Service Contractor shall hire Covered Retention employees based on seniority within each job classification when positions become available during the initial ninety (90) day period of the Replacement Service Contract. For any positions that become available during the initial ninety (90) day period of the Replacement Service Contract, the Replacement Service Contractor will hire qualified Covered Retention Employees who are eligible for retention under this Policy.



SAN DIEGO COUNTY REGIONAL AIRPORT AUTHORITY

Exhibit F

Board Communication

Date: October 27, 2010
To: Board Members
From: Jeffrey Woodson, Vice President, Administration
Subject: Worker Retention Considerations

Attached is a list of policy considerations for your contemplation in advance of your discussion regarding a worker retention policy. These considerations are the primary elements that would be factored into a Board policy should the Board decide to establish such a policy. They are intended to represent the broad range of thinking and discussion articulated in the last Board meeting.

During the November Board meeting, staff will facilitate a discussion of the proposed policy. It is anticipated that the discussion will generate a consensus through a series of straw votes that will determine such issues as:

- whether or not to establish a policy
- if a policy is desired, determining if it is mandatory or voluntary for prospective contractors

Should the Board decide to move forward with such a policy, several considerations will need to be determined. A decision matrix will be used to facilitate that discussion related to the following considerations:

- targeted employee population
- types of contracts subject to the policy
- targeted position classes
- any exclusions from the policy
- transition issues
- if incentives are offered, the types of incentives

Our intent is to use the matrix to summarize the issues, establish a consensus of the Board, and use that consensus to generate a framework for a worker retention



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policy (should that be the will of the Board). The framework would then be provided to Board members prior to the December Board meeting for review. Staff would prepare a draft policy, based on the responses, available for Board consideration at the December Board meeting.

I hope that this methodology will help in objectively determining the will of the Board regarding this issue. We are attempting to be innovative in our approach in assisting the Board to provide direction to staff. Should you have any additional comments, questions or concerns please give me a call at 619.400.2510.



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WORKSHEET - WORKER RETENTION CONSIDERATIONS

Policy Considerations	Board Determination
ADOPT A POLICY OR NO ACTION	
<p>IMPLICATIONS: The establishment of a worker retention program aims to promote job security among contractors' employees and maintains the Authority's interest in continuous operations of airport services. Incumbent workers have invaluable knowledge and experience with Airport schedules, practices and clients. Retaining existing service workers when a change in contractors occurs reduces the likelihood of labor disputes and disruptions while resulting in the continuity of services.</p> <p>Establishing a program will require the Authority to have in place appropriate processes to implement and monitor compliance. This could be accomplished with either Authority staff or a third party contract, both at additional cost to the Authority. In addition, administration and labor dispute risk would be assumed by the new contractor. Contractors' proposed fees may be higher if the contractors pass the costs of worker retention on to the Authority in their solicitation responses.</p> <p>Increased costs of doing business with the Authority under the terms of a program could reduce competition for Authority contracts by limiting the pool of respondents willing or able to meet the contracting requirements. This may be especially discouraging to small businesses trying to maintain an existing workforce. Some contractors may opt not to participate in contracting opportunities depending on the program in place. Some contractor employees may opt not to participate in the program because they prefer to remain with their current employer at another job location.</p>	
Adopt a policy	
No action	

MANDATORY OR VOLUNTARY	
<p>IMPLICATIONS: Mandatory means a contract requirement for new contractors to hire existing Airport workers. Voluntary means a resource available for contractors looking to hire additional employees experienced at serving in an Airport environment.</p>	
Mandatory	
Voluntary	

TARGET AUDIENCE	
<p>IMPLICATIONS: Low wage earners would target workers under a defined threshold. All wage earners would allow the Board to designate by contract type or position class.</p>	
All wage earners	
Low wage earners	
Low wage threshold: _____	

WORKSHEET - WORKER RETENTION CONSIDERATIONS

Policy Considerations	Board Determination
TYPES OF CONTRACTS AND GENERAL POSITION CLASSES	
<p>IMPLICATIONS: This list includes a variety of prime contractors and subcontractors that a policy may apply to as well as multiple position classes. The list is not a comprehensive listing of all types of contracts, subcontracts, or revenue-generating agreements. The Board may wish to add others.</p> <p>Concessions have been restricted to businesses operating within the SDIA terminals. Examples of professional services include program managers, elevator maintenance technicians and inspectors. Non-professional services may or may not require full time workers. For example, a landscaper or pest control worker may be assigned to the airport for 30% of the time and work for other customers 70% of the time.</p>	
All contracts	
Concessions	
Retail workers	
Food and beverage	
Cashiers	
Other services (nail salon, shoe shining, etc.)	
Professional Services	
Consultants	
Technicians	
Field experts	
Non-professional services	
Security guards	
Landscapers	
Parking attendants/customer service representatives	
Airport shuttle drivers	
Valet	
Clerical	
Plant service	
Pest control	
Trades/maintenance workers	

EXCLUSIONS	
<p>IMPLICATIONS: Exclusions provide new contractors with the ability to retain or hire the most qualified employee for a position.</p>	
Exclusions	
Managers	
Supervisors	
Confidential	
Occupational license requirement	
Special circumstances, e.g. specialized work skill	
Small/family-owned businesses (number of employees TBD)	

WORKSHEET - WORKER RETENTION CONSIDERATIONS

Policy Considerations	Board Determination
TRANSITION CONSIDERATIONS	
IMPLICATIONS: Length of time in the worker retention pool defines the length of time a new contractor has to hire from the pool. The transition period is the length of time between placement and the offer of continued employment.	
Length of placement from worker retention pool - limited	
30 days	
60 days	
90 days	
Length of placement from worker retention pool - indefinite	
Returned to the hiring pool if employee refuses an offer	
Transition period for selected employee	
30 days	
60 days	
90 days	

FOR A VOLUNTARY POLICY, ADDITIONAL CONSIDERATIONS	
IMPLICATIONS: Incentives can be granted for a voluntary policy. Evaluation incentive means a preference given to potential contractors for a hiring plan (including interviews) for workers participating in the program.	
Evaluation incentive	
- Separate points for hiring plan	
- Consideration for "Company" evaluation score (hiring, benefits, sustainability, etc.)	

OTHER CONSIDERATIONS	
IMPLICATIONS:	

**Length of Employment
of Active Concession Employees**

	Total	Percentage
Unknown Hire Date	15	1.83%
0-6 months	100	12.18%
7-12 months	32	3.90%
13-24 months	73	8.89%
25-36 months	71	8.65%
37-48 months	90	10.96%
49-60 months	73	8.89%
5 yrs., 1 mo.-10 yrs.	181	22.05%
10 yrs., 1 mo.-15 yrs.	76	9.26%
15 yrs., 1 mo.-20 yrs.	41	4.99%
20 yrs., 1 mo.-25 yrs.	41	4.99%
25 yrs., 1 mo.-30yrs.	14	1.71%
30 yrs., 1 mo.-40 yrs.	8	0.97%
40 yrs., 1 mo. & over	6	0.73%
Total	821	100.00%