

SAN DIEGO COUNTY REGIONAL AIRPORT AUTHORITY

POLICIES

ARTICLE 5 - CONTRACTING AND DEBARMENT

PART 5.1 - EQUAL OPPORTUNITY

SECTION 5.15 - EQUAL BENEFITS FOR SPOUSES AND DOMESTIC PARTNERS

PURPOSE: To promulgate a formal policy statement of the San Diego County Regional Airport Authority (the “Authority”) to ensure that contractors and lessees provide equal benefits between employees with spouses and employees with domestic partners, and between dependents and family members of spouses and dependents and family members of domestic partners.

POLICY STATEMENT:

(1) It is the policy of the Authority that all contractors and lessees who conduct business with the Authority shall not discriminate against any employee or applicant for employment because of sexual orientation (see Authority Policy § 5.10). Discrimination in the provision of employee benefits between employees with domestic partners and employees with spouses results in unequal pay for equal work. It is the Authority’s intent, through the contracting policies outlined in this Policy, to assure that those companies wanting to do business with the Authority will equalize the total compensation between similarly situated employees with spouses and with domestic partners. The provisions of this Policy are designed to ensure that the Authority’s contractors and lessees will maintain a competitive advantage in recruiting and retaining capable employees, thereby improving the quality of the goods and services the Authority and its customers receive.

(2) Definitions:

(a) **“Benefits”** means any plan, program or policy provided or offered by a Contractor to its employees as part of the employer’s total compensation package. This includes, but is not limited to, the following types of benefits: bereavement leave; family medical leave; health benefits; disability, life, and other types of insurance; membership or membership discounts; moving expenses; vacation; travel benefits; and any other plans, policies or benefits given to employees, provided that it does not include benefits to the extent that the application of the requirements of this Policy to such benefits may be preempted by federal or state law.

(b) **“Contract”** means an agreement the value of which is equal to or exceeds fifty thousand dollars (\$50,000). It includes, but is not limited to, agreements for work or services to or for the Authority, for public works or improvements to be performed, agreements for the purchase of goods, equipment, materials, or supplies. Contract also includes any lease or license entered into by the Authority.

- (c) **“Contractor”** means any person, firm, partnership, corporation, joint venture, or any combination of these, or any governmental entity acting in its proprietary capacity, that enters into a Contract with the Authority. The term does not include Subcontractors.
- (d) **“Domestic Partner(s)”** means any two adults in a relationship pursuant to the requirements for filing as domestic partners under California Family Code § 297 and who have registered as domestic partners with a governmental entity pursuant to state or local law authorizing this registration.
- (e) **“Equal Benefits”** means the equality of benefits between employees with Spouses and employees with Domestic Partners, between Spouses of employees and Domestic Partners of employees, and between dependents and family members of Spouses and dependents and family members of Domestic Partners.
- (f) **“Policy”** means Authority Policy § 5.15 as amended.
- (g) **“Spouse(s)”** means any two adults, of the same or different sex, whose marriage is recognized under the laws of the State of California.
- (h) **“Subcontractor”** means any person, firm, partnership, corporation, joint venture, or any combination of these, or any governmental entity acting in its proprietary capacity, that assists the Contractor in performing or fulfilling the terms of a Contract. Subcontractors are not subject to the requirements of this Policy unless they otherwise have a Contract directly with the Authority.

(3) **Equal Benefits Requirements**

(a) The Authority shall not execute any Contract with any Contractor that discriminates in the provision of Benefits between employees with Spouses and employees with Domestic Partners, between Spouses of employees and Domestic Partners of employees, and between dependents and family members of Spouses and dependents and family members of Domestic Partners. For the avoidance of doubt, benefits will be provided equally to Spouses and Domestic Partners of employees regardless of gender, and also equally to all Domestic Partners as compared to Spouses.

(b) A Contractor must permit access to, and upon request, must provide certified copies of all of its records pertaining to its Benefits policies and its employment policies and practices to the Authority, for the purpose of investigation or to ascertain compliance with this Policy.

(c) A Contractor must not set up or use its contracting entity for the purpose of evading the requirements imposed by this Policy.

(d) A Contractor shall not be deemed to be engaging in discrimination in the provision of Benefits when:

(i) The actual cost of providing a certain benefit for the Domestic Partner of an employee exceeds that of providing it for the Spouse of an employee, or the Contractor's actual cost of providing a certain benefit for the Spouse of an employee exceeds that of providing it for the Domestic Partner of an employee, and the Contractor conditions providing such benefit upon the employee agreeing to pay the excess cost;

(ii) The implementation of policies ending discrimination in benefits is delayed following the first award of an Authority Contract:

(1) Until the first effective date after the first open enrollment process following the date the Contract with the Authority is executed, provided that the Contractor submits evidence of reasonable efforts to end discrimination in benefits. This delay may not exceed two (2) years from the date the Contract with the Authority is executed and only applies to benefits for which an open enrollment process is applicable.

(2) Until administrative steps can be taken to incorporate nondiscrimination in benefits in the Contractor's infrastructure. The time allotted for these administrative steps shall apply only to those benefits for which administrative steps are necessary and may not exceed three (3) months. An extension of this time may be granted by the Authority President/CEO upon written request of a Contractor, setting forth the reasons that additional time is required.

(3) Until the expiration of a Contractor's current collective bargaining agreement(s) where all of the following conditions have been met:

(a) The provision of Benefits is governed by one or more collective bargaining agreements; and

(b) The Contractor takes all reasonable measures to end discrimination in Benefits by either requesting that the union(s) involved agree to re-open the agreement(s) in order for the Contractor to take whatever steps are necessary to end discrimination in Benefits or by ending discrimination in Benefits without reopening the collective bargaining agreement(s); and

(c) In the event the Contractor cannot end discrimination in Benefits despite taking all reasonable measures to do so, the Contractor provides a cash equivalent to eligible employees for whom Benefits are not available. Unless otherwise authorized in writing by the Authority President/CEO, this cash equivalent payment must begin at the time the union(s) refuse to allow the collective bargaining agreements to be reopened, or in any case no longer than three (3) months from the date the Contract with the Authority was executed. This cash equivalent payment shall not be required where it is prohibited by federal or state law.

(4) **Other Options for Compliance** – Provided that the Contractor does not discriminate in the provision of Benefits, a Contractor may also comply with this Policy in the following ways:

(a) A Contractor may provide an employee with the cash equivalent only if the Authority President/CEO determines that either:

(i) The Contractor has made a reasonable, yet unsuccessful effort to provide Equal Benefits; or

(ii) Under the circumstances, it would be unreasonable to require the Contractor to provide Benefits to the Domestic Partner (or Spouse, if applicable).

(b) Provide Benefits neither to employees' Spouses nor to employees' Domestic Partners.

(5) Applicability

(a) Unless otherwise exempt, a Contractor is subject to and shall comply with all applicable provisions of this Policy when entering into a Contract with the Authority that equals or exceeds fifty thousand dollars (\$50,000).

(b) The requirements of this Policy shall only apply to a Contractor's operations that occur:

(i) In the County of San Diego;

(ii) On real property located outside the County of San Diego if the property is owned by the Authority, or the Authority has a right to occupy the property, and if the Contractor's presence at or on the property is connected to a Contract with the Authority; and

(iii) Elsewhere in the United States where work related to an Authority Contract is being performed.

(6) Mandatory Contract Provisions Pertaining to Equal Benefits

(a) Unless otherwise exempt, every Contract shall contain language that obligates Contractor to comply with the applicable provisions of this Policy.

(7) Non-applicability, Exceptions, and Waivers – The Authority President/CEO may waive compliance with this Policy under the following circumstances:

(a) The Contract is for the use of Authority property, and there is only one prospective Contractor willing to enter into the Contract.

(b) The Contract is for needed goods, services, construction of a public work or improvement, or interest in or right to use real property that is available only from a single

prospective Contractor, and that prospective Contractor is otherwise qualified and acceptable to the Authority.

(c) The Contract is necessary to respond to an emergency that endangers the public health or safety.

(d) The Contract is awarded as a sole source procurement under Authority Policy § 5.01(6).

(e) The General Counsel certifies in writing that the contract involves specialize litigation requirements such that it would be in the best interests of the Authority to waive the requirements of this Policy.

(f) The Contract is: (i) with a public entity; (ii) for goods, services, construction of a public work or improvement, or interest in or right to use real property; and (iii) that is either not available from another source, or is necessary to serve a substantial public interest.

(g) The requirements of this Policy will violate, or are inconsistent with the terms of a grant, subvention or agreement with a public agency or the instruction of an authorized representative of a public agency with respect to any grant, subvention or agreement.

(h) The Contract is for goods, services, or a project that is essential to the Authority and there are no qualified prospective Contractors who comply with this Policy.

(i) The Contract involves bulk, cooperative, or joint purchasing arrangements.

(j) The Contract involves:

(1) The investment of trust moneys or agreements related to the management of trust assets;

(2) Authority money invested in U.S. government securities or under pre-existing investment agreements; or

(3) The investment of Authority money where the Authority President/CEO finds that:

(a) No person, entity or financial institution doing business in the County of San Diego that is in compliance with this Policy is capable of performing the desired transaction(s); or

(b) The Authority will incur a financial loss which, in the opinion of the Authority President/CEO or his/her designee, would violate his/her fiduciary duties.

(k) The Authority President/CEO determines that it is in the best interest of the Authority to waive the requirements of this Policy and the Contract is reported to the Authority's Board of Directors at the Board meeting following the execution of the Contract.

(l) Nothing in this subsection shall limit the right of the Authority's Board of Directors to waive the requirements of this Policy.

(8) **Consistency with Federal Law** – The provisions of this Policy do not apply where the application of these provisions would violate or be inconsistent with the laws, rules or regulations of federal or state law, or where the application would violate or be inconsistent with the terms or conditions of a grant or contract with the United States of America, the State of California, or the instruction of an authorized representative of any of these agencies with respect to any grant or Contract.

(9) **Effective Date** – The requirements of this Policy shall not apply to Contracts executed or bid packages advertised and made available to the public before April 1, 2015.

[Adopted by Resolution No. 2015-0013 dated January 15, 2015.]