



CITY OF MILPITAS AGENDA REPORT (AR)

Item Title:	Adopt a Resolution Amending and Restating the Wage Theft Procurement Policy
Category:	Consent Calendar-Leadership and Support Services
Meeting Date:	3/1/2022
Staff Contact:	Lauren Lai, Finance Director, 408-586-3111
Recommendation:	Adopt a resolution to amend and restate the City's Wage Theft Procurement Policy

Background:

The City of Milpitas adopted an anti-wage theft procurement policy through Resolution No. 8768 on May 1, 2018. City staff have found that certain parties contracting with the City of Milpitas find it impracticable to agree to the Policy's Wage Theft Prevention contract language. The proposed amendments to the City of Milpitas Wage Theft Procurement Policy would create additional exemptions in order to provide greater flexibility to the City and ensure that the City obtains needed goods and services.

Analysis:

Pursuant to the City's Wage Theft Procurement Policy (Resolution No. 8768), it is the policy of the City of Milpitas that all parties contracting with the City must comply with all applicable federal, state and local wage and hour laws including but not limited to the Federal Fair Labor Standards Act ("FLSA"), the California Labor Code and the Milpitas Minimum Wage Ordinance. The Policy requires as a part of a City solicitation for supplies, materials, goods and/or services, a potential contractor to complete a "Bid Certification" to disclose whether the contractor or any of its subcontractors has been found by a final court order or administrative action of an investigatory government agency to have violated federal, state or local wage and hour laws. In addition, all City contracts subject to this Policy must include the certain contract provisions ensuring that the contractor and any subcontractor it employs will comply with all applicable federal, state and local wage and hour laws.

Currently the following types of procurements are exempt from the Policy:

- A. Individual City solicitations, contracts or purchases for supplies, materials, goods and/or services of Five Thousand Dollars (\$5,000) or less; or
- B. City solicitations, contracts or purchases for supplies, materials, goods and/or services secured either through "piggyback procurement," where the pricing and terms have been previously established by another public agency, pursuant to Milpitas Municipal Code Section I-2-3.07 or "cooperative procurement," a cooperative purchasing program entered into by a public agency, regardless of whether the City is named a party to the agreement, pursuant to Milpitas Municipal Code Section I-2-3.08; or
- C. City solicitations, contracts or purchases for supplies, materials, goods and/or services where application of this Policy would conflict with the California Public Contract Code, or other applicable State or Federal law.

The proposed amendments to the City of Milpitas Wage Theft Procurement Policy would create additional exemptions in order to provide greater flexibility to the City and ensure that the City obtains needed goods and services:

- Individual City solicitations, contracts or purchases for supplies, materials, goods and/or services of ten thousand dollars (\$10,000) or less.
- City solicitations, contracts or purchases of insurance.
- City solicitations, contracts or purchases of software licenses, Software as a Service (SaaS) licenses or subscriptions, and information technology hardware or equipment.
- City solicitations, contracts or purchases of utilities for the City entity, including but not limited to, telephone service, gas, electricity or water.
- City solicitations, contracts, or purchases of legal services.
When determined by the City Manager to be in the best interests of the City and where the solicitation, contract, or purchase is \$50,000 or less.

Policy Alternative:

Do not adopt the proposed revisions to the Wage Theft Procurement Policy.

Fiscal Impact:

There is no fiscal impact associated with this proposed amendment to the Wage Theft Procurement Policy.

California Environmental Quality Act:

Not applicable. In accordance with CEQA Guidelines section 15378(b)(5), action on this item is not a project subject to CEQA because it is an administrative action that will not result in a physical change to the environment.

Recommendation:

Adopt a resolution amending and restating the Wage Theft Procurement Policy.

Attachment:

1. Resolution