



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 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.

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

RESOLUTION NO. 2010-0100

A RESOLUTION OF THE BOARD OF THE
SAN DIEGO COUNTY REGIONAL AIRPORT
AUTHORITY APPROVING POLICY 9.40 "WORKER
RETENTION FOR EMPLOYEES OF
CONTRACTORS AND SUBCONTRACTORS
PROVIDING SERVICES AT SAN DIEGO
INTERNATIONAL AIRPORT"

WHEREAS, the San Diego County Regional Airport Authority ("Authority") recognizes that retaining existing service workers creates a work environment that promotes job security among contractors' employees and maintains the Authority's interest in continuous operations of services at San Diego International Airport ("Airport") using experience and trained workers; and

WHEREAS, the Authority utilizes a competitive solicitation process to award most service contracts which may result in the award of a replacement service contract to a different service contract provider; and

WHEREAS, the award of a new service contract does not necessarily include the need to replace all of the existing workforce providing Airport services under that contract; and

WHEREAS, the establishment of a worker retention policy for specified employees of contractors and subcontractors providing certain Airport services recognizes that:

- Incumbent workers provide invaluable knowledge and experience acquired on-the-job with regard to the specific work they perform at the Airport;
- Replacing experienced existing workers who are already trained and knowledgeable to perform their jobs decreases efficiency and results in a disservice to the Authority, the community and the traveling public;
- Retaining existing employees reduces the likelihood of labor disputes and labor disruptions;
- Retaining existing incumbent employees promotes security and safety through the continued use of already fully screened and reliable employees with a history of demonstrated trustworthiness;
- Retaining existing incumbent employees leads to better and more reliable passenger customer service; and

- Retaining existing incumbent employees ensures stability of the workforce, avoids unemployment, reduces workforce turnover rates, and decreases the need for social services in the San Diego area.

NOW, THEREFORE, BE IT RESOLVED that the Board hereby approves Policy 9.40 "Worker Retention for Employees of Contractors and Subcontractors Providing Services at San Diego International Airport", a copy of which is attached as "Exhibit A" hereto; and

BE IT FURTHER RESOLVED that the Board FINDS that adopting Policy 9.40 "Worker Retention for Employees of Contractors and Subcontractors Providing Services at San Diego International Airport" supports the following important Board concerns:

- Incumbent workers provide invaluable knowledge and experience acquired on-the-job with regard to the specific work they perform at the Airport;
- Replacing experienced existing workers who are already trained and knowledgeable to perform their jobs decreases efficiency and results in a disservice to the Authority, the community and the traveling public;
- Retaining existing employees reduces the likelihood of labor disputes and labor disruptions;
- Retaining existing incumbent employees promotes security and safety through the continued use of already fully screened and reliable employees with a history of demonstrated trustworthiness;
- Retaining existing incumbent employees leads to better and more reliable passenger customer service; and
- Retaining existing incumbent employees ensures stability of the workforce, avoids unemployment, reduces workforce turnover rates, and decreases the need for social services in the San Diego area.

BE IT FURTHER RESOLVED that the Board FINDS that this action is not a "project" as defined by the California Environmental Quality Act ("CEQA"), Pub. Res. Code §21065; and further is not a "development" as defined by California Coastal Act, Pub. Res. Code §30106.

PASSED, ADOPTED, AND APPROVED by the Board of the San Diego County Regional Airport Authority at a regular meeting this 2nd day of September, 2010, by the following vote:

AYES: Board Members:

NOES: Board Members:

ABSENT: Board Members:

ATTEST:

TONY R. RUSSELL
**DIRECTOR, CORPORATE SERVICES/
AUTHORITY CLERK**

APPROVED AS TO FORM:

BRETON K. LOBNER
GENERAL COUNSEL

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.

- h. The Replacement Service Contractor shall retain Covered Retention Employees for a minimum of ninety (90) days from the start date of the Replacement Service Contract and during that time shall not discharge Covered Retention Employees without cause. At the completion of the ninety (90) day transition period, the Replacement Service Contractor shall perform a written performance evaluation for each Covered Retention Employee retained and performing work at the Airport. If the Covered Retention Employee's performance is satisfactory, the Covered Retention Employee will be offered continued employment with the Replacement Service Contractor under terms and conditions established by the Replacement Service Contractor for all of its employees holding similar positions.
 - i. The Replacement Service Contractor shall maintain a list of all eligible Covered Retention Employees not retained from which the Replacement Service Contractor may hire additional employees after the initial ninety (90) day period.
5. Enforcement:
- a. Compliance with this Policy shall be required in all Authority contracts to which it applies. Such contracts shall provide that a violation of this Policy shall entitle the Authority to terminate the contract, debar the Replacement Service Contractor from future contracts at the Airport, and/or otherwise pursue legal remedies that may be available.
 - b. This Policy is not intended to nor shall it impose upon the Authority or its officers and employees, any obligation for breach of which the Authority or its officers and employees is liable in money damages to any person or entity who claims that such breach proximately caused injury or for any other type of legal relief.
 - c. This Policy is not intended to create any power or duty in conflict with state or federal law or to diminish any rights or obligations established by state or federal law.
6. Exemptions: The following contracts are exempt from this Policy:
- a. Contracts under which federal or state regulations preclude its applicability;
 - b. Contracts that are impacted by bond covenants, grant restrictions, governmental regulations and the like shall be reviewed on a case by case basis and the policy included to the extent it is not constrained;
 - c. Contracts for professional services for specialized skills including but not limited to experts, consultants, auditors, engineers, attorneys and banking/finance; and
 - d. Contracts where the imposition of the Policy is not in the best interest of the Authority, as determined by the Board.