

GENERAL SERVICES AGENCY  
OFFICE OF LABOR STANDARDS ENFORCEMENT  
PATRICK MULLIGAN, DIRECTOR



**SWEATFREE PROCUREMENT ADVISORY GROUP**  
**Minutes from the January 12, 2023 Meeting**

**MEMBERS PRESENT:** Conchita Lozano-Batista (Chair), Coyote Codornices Marin (Vice-Chair), Jason Oringer, Joyce Kimotsuki, Julie Fisher, John Logan

**CITY STAFF PRESENT:** Hallie Albert (OLSE), Patrick Mulligan (OLSE), Shawn Peeters (OCA), Sailaja Kurella (OCA)

**CALL TO ORDER/INTRODUCTIONS**

**1. RESOLUTION TO HOLD MEETING VIA TELECONFERENCE AND VIRTUAL MEETING STATUS**

Adopted unanimously.

**2. ADOPTION OF AGENDA**

Agenda for the January 12, 2023 meeting was unanimously adopted after moving the Approval of Minutes after the OCA Update.

**3. PUBLIC COMMENTS FOR ITEMS NOT ON THE AGENDA**

There was no public comment.

**4. CONTRACT RECOMMENDATION UPDATE**

Conchita Lozano-Batista addressed questions that Corporate Accountability Lab ("CAL") sent to the group. First, Lozano-Batista asked the group if they want to allow for exceptions to the proposed liability cap and reviewed the reasons for such a cap. The group discussed an exception for gross negligence when there is a near or total disregard for the welfare of the workers. Lozano-Batista, Julie Fisher, and Jason Oringer all supported having a gross negligence exception.

As to concerns about the liability cap not applying when there is gross negligence by a manufacturer, Sailaja Kurella said that when departments need a specific uniform and the supplier can provide it at a good price, the supplier has no say in who they procure the specific uniform from as there is usually a very small set of manufacturers making that uniform. Therefore, the supplier is forced to overlook the business practices of the manufacturers in the supply chain to supply the City with its preferred product. Lozano-Batista raised that the City should already be enforcing the ordinance to ensure manufacturers are complying and if a carve out is created for a specific situation, like a preferred uniform, it may lead to a lot of contracts being exempted from the gross negligence exemption to the liability cap. A discussion followed on sole source contracts.

Coyote Marin asked if the liability cap would be the contract amount and whether there are any instances where liquidated damages would be enforced pursuant to the Sweatfree Ordinance. Patrick Mulligan said OLSE has never had a direct enforcement action on the ordinance and does not have standing beyond the

enforcement or severing of the contract itself. Marin then raised basing the liability cap on the purchase orders versus the contract size (e.g. 10% of the contract or the POs). Kurella explained that to hold a contractor liable for the total contract when money has not yet been expended on the total size of the contract must be considered.

Lozano-Batista asked whether the group wants to limited the liability on an action brought by third parties pursuant to the contract and to what extent. Fisher said workers should be paid for wages up to the time the contract is severed, but asked if a 60-day notice or the like could be incorporated. Oringer raised that the law does not just cover anti-poverty wage rates. It also incorporates other protections, such as anti-discrimination, so some liability can be incurred that goes beyond the payment of wages. Further, San Francisco has two vendors with one being a local company that the group needs to protect.

Lozano-Batista addressed setting the liability cap as the contract size for simplicity and addressed past cases of forced oral contraception, pregnancy discrimination, and the like where liability is not assessed as just the time worked/wages owed, so they would not want to limit workers from bringing such meritorious cases. Therefore, they could set the cap to equate to the size of the contract without any limitation on the types of claims that can be brought.

Next, Lozano-Batista inquired whether the liability cap will renew or reset if the contract is amended or extended. Kurella explained the PO gives a sense of which amendment/extension the work at issue occurred pursuant to and the size of the contract grows with each amendment. If the group proposes some language regarding liability being equal to the size of the contract or the amended contract amount, OCA will review to ensure it is workable. Kurella also raised that the whole contract amount may include multiple product lines, each with a different supply chain and manufacturer, so the proposed cap would still have a vendor on the hook for the whole amount of the contract even if one supply chain is the bad actor.

Lozano-Batista said she will get draft language from CAL on the liability cap and provide it to the group and OCA for review.

Lozano-Batista then asked about the jurisdictional prerequisite and whether a worker would be required to go to OLSE to resolve their claim before going to court. A discussion ensued regarding the appropriate forum to support the prerequisite and whether there is any existing language that establishes a similar mechanism. Hallie Albert raised that OLSE does not have the enforcement authority to serve in the proposed role and it may require changes to the ordinance beyond the proposed third-party beneficiary change. Lozano-Batista said the mechanism might be better served with some kind of arbitration. Lozano-Batista will ask CAL to ask Workers Rights Consortium (WRC) if they know of options for forums and report back. Albert mentioned that the City is back in contract with WRC and WRC will be present for the next meeting.

## **5. APPROVAL OF MINUTES FEROM DECEMBER 8, 2022 MEETING**

Upon correction of a typo and changing “they” to “the group” the minutes were approved unanimously.

## **6. OCA UPDATE**

Shawn Peeters shared a report for the period of December 1, 2021 through January 11, 2023. Since December’s meeting, there was one contract added to the relevant list, for ballistic vests for the District Attorney’s Office. Peeters is continuing to push for the 12-U-I forms from Muscatello’s. Albert explained that she will be working with Peeters to get the factory disclosures to WRC so they can plan for conducting

outreach. Lozano-Batista asked Albert to have WRC speak about their strategic plan and the new structure at the February meeting.

#### **7. DISCUSS RECRUITMENT OF MEMBERS**

Albert confirmed that she sent the recruitment letter, drafted by Albert and Lozano-Batista, to several law school clinics and other groups in summer 2022. Albert will send the letter out again and add the Labor Center at Berkeley and Garment Workers Center as well as notify the group of the list of recipients. This matter should be placed on the agenda for the March meeting.

#### **8. POTENTIAL ITEMS FOR FUTURE AGENDAS**

WRC Update  
Contract Update  
OCA update