


CITY AND COUNTY OF SAN FRANCISCO  
BOARD OF SUPERVISORS  
BUDGET AND LEGISLATIVE ANALYST  
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**Policy Analysis Report**

To: Supervisor Catherine Stefani  
From: Budget and Legislative Analyst's Office   
Re: Considering Bidders' Labor Law Violation History as part of City Procurement  
Date: December 2, 2024

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**Summary of Requested Action**

Your office requested that the Budget and Legislative Analyst conduct an analysis of procurement and the degree to which bidders' compliance with federal, state, and local labor laws is taken into account as part of the procurement process.

***For further information about this report, contact Fred Brousseau, Director of Policy Analysis, at the Budget and Legislative Analyst's Office.***

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**Executive Summary**

- San Francisco City departments do not screen contract bidders for their history of compliance with federal, state, or local labor laws. Collecting such information is not a requirement in the City's Administrative Code or any City regulations pertaining to procurement of goods and services.
- We interviewed City staff from six departments, three departments that contract for construction and construction-related services as well as procure non-construction goods and services and three that only procure non-construction services such as general commodities, professional services, software licenses, and equipment. We found that none of the surveyed departments - the Department of Public Works, San Francisco Metropolitan Transportation Agency, Public Utilities Commission, the Department of Public Health, Department of Homelessness and Supportive Housing, and the Mayor's Office of Housing and Community Development - conduct labor law compliance reviews of prospective contractors or request that bidders disclose their past labor law violations prior to entering into contracts. Further, City staff interviewed for this report were not aware of other departments engaging in a review of bidders' history of compliance with labor laws.
- The City's Office of Labor Standards Enforcement (OLSE) generally conducts investigations of labor law violations on a complaint-driven basis, as does the state's Department of Industrial Relations Division of Labor Standards Enforcement (DLSE). City staff could review OLSE and

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*Budget and Legislative Analyst*

DLSE records for past labor violations of prospective contractors though OLSE cases only cover firms about which complaints have been filed and DLSE's efficiency is in question at present. In any case, City departments are not using either of these or any other sources to investigate their bidders' past labor law violations.

- To determine if there is a rationale for City departments to investigate bidders' labor law violation histories, we reviewed City OLSE data and a sample of state DLSE records. We found that some City contractors do indeed have histories of labor law violations. However, aside from the financial judgment amount, the specific nature and extent of these violations is not readily available from either City or state records. In our review of these records, we found that:
  - State records: Five out of 150 randomly selected current City contractors had been ordered to pay judgments for past violations of labor laws by the state DLSE. While a small percentage of the sample firms, it should be noted that the state data could be understated; a recent state audit of the agency found that its investigations were not resulting in timely adjudication of wage issues due to staff shortages.
  - City records: In our review of the City's OLSE records, we found that 1,129 of OLSE's investigations resulted in financial judgments over the five-year period from FY 2018-19 through FY 2022-23, of which 709 were City contractors found to be in violation of City contract laws, mostly prevailing wage requirements and other labor laws.
- In our interviews, some City staff questioned the benefit of requesting information on past labor law violations from bidders, citing the additional time it would likely add to the procurement process. They further asked how the information could be used if collected to ensure a fair and equitable procurement process given that contractors with violation histories may have since changed their business practices and/or had no further violations. Such histories could potentially be one of many factors considered as part of a bidder's qualifications and responsiveness to a bidding opportunity to provide some assurance that such violations won't occur on any new contracts though this benefit would have to be compared to bidder time preparing and staff time spent processing disclosures.
- To limit the possibility of City contractors violating labor laws, the Board of Supervisors could adopt a policy precluding contractors with serious past labor law violations from City contracts for up to a certain amount of time. Such a policy could be further calibrated depending on the circumstances and magnitude of the past violations and any changes in business practices that occurred subsequently. The City's OLSE records show that some violations are relatively minor, resulting in small financial judgments, and may reflect bookkeeping errors rather than ongoing systematic wage theft, for example.
- Having a standardized procedure in place for City staff to process past labor law violation disclosures would ensure that the information is not misinterpreted or held against a company unfairly. Rating a bidder lower than others due to a past labor law violation could

be unfair for instances in which a violation that occurred in the past has been corrected and restitution has been made to workers.

**Potential model: City’s process for checking construction contract bidders’ safety records**

- A requirement is in place in the City for departments to screen construction project bidders for their safety records as part of the procurement process. The protocol in place to meet this requirement could possibly serve as a model that could be replicated for screening bidders’ labor law compliance history if the Board of Supervisors wishes to establish such a practice.
- Chapter 6 of the City’s Administrative Code, which governs construction and construction-related procurement, requires that City contractors meet criteria for being responsible and responsive bidders. Responsible bidders are defined as meeting the qualifying criteria for a particular project in terms of experience and qualifications, dealing in good faith with the City, and substantiating a record of safe performance on construction projects.
- Assessing a bidder’s safety record includes consideration of federal or state Occupational Safety and Health Administration (“OSHA”) violations and workplace fatalities, including OSHA citations under appeal, according to Chapter 6 of the Administrative Code.
- The City has established a three-step evaluation procedure, which incorporates a third-party safety expert’s review if the bidder is not able to submit reports substantiating its safety record in Steps 1 or 2. This approach provides for a standardized and fair process of evaluating bidders’ safety records. It also is another requirement for bidders and adds staff time to the procurement process for these types of contracts.

**Other city example: the City of Los Angeles requires bidders to disclose past labor and other law violations**

- The City of Los Angeles requests bidders to report if any of their owners, partners or officers have ever been investigated, cited, assessed any penalties, or found to have violated any laws, rules, or regulations enforced or administered, by a wide range of government entities including the U.S. Department of Labor, the California Department of Industrial Relations, and the City of Los Angeles, which together cover federal, state, and local labor laws.
- The City of Los Angeles has a flexible approach to how the disclosures are used. It does not have a standardized protocol for reviewing responses but could terminate a contract if a contractor was found to have not disclosed prior violations of the covered laws. If bidders report prior violations, the contracting department could re-bid the procurement or decide to proceed with the bidder, depending on the circumstances. The Los Angeles approach would be simpler for San Francisco to adopt than replicating the safety review described above. The absence of a standardized protocol, however, could lead to a bidder being treated differently by different departments.

## Policy Options

1. The Board of Supervisors could consider adopting a process through ordinance where bidders would be required to disclose their history of labor law violations, with disclosures reported to be further evaluated before a contract is entered into or used as a basis for terminating a contract if the information is later found to be inaccurate—or pursuing debarment of a contractor for the most serious violations.
2. If the Board of Supervisors elects to adopt a process requiring that bidders for City contracts disclose their labor law violation history before entering into contracts, it could create a process similar to the one developed for construction safety violations by first modifying the definition of a responsible bidder to include a track record of labor law compliance, including development of a screening system to categorize more serious and less serious labor violations, similar to the City’s screening rubrics in place for safety violations, with all departments following the new procurement procedure in a uniform fashion.
3. The Board of Supervisors could also consider adopting the approach employed by the City of Los Angeles, where bidders are required to disclose any past violations of labor (and other) law, to have that information on record but without any standardized protocol in place for processing such disclosures.

*Project Staff: Fred Brousseau and Rashi Kesarwani*

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## City Departments Generally Do Not Review Labor Law Violations as Part of Procurement Process

To determine the extent to which City departments consider bidders' past compliance with federal, state, and local labor laws, the Budget and Legislative Analyst's Office conducted interviews with representatives from City departments: three departments that contract for construction and construction-related services as well as procure non-construction goods and services and three that only procure non-construction services such as general commodities, professional services, software licenses, and equipment. For the first group, referred to as Chapter 6 departments because construction and construction-related procurement is governed by Chapter 6 of the City's Administrative Code, we interviewed representatives of the Department of Public Works (DPW), the Public Utilities Commission (PUC), and the San Francisco Municipal Transportation Agency (MTA). For a sample of departments whose procurements are only subject to Chapter 21 because they do not administer construction contracts, we interviewed representatives of the Department of Public Health (DPH), Department of Homelessness and Supportive Housing (HSH), and the Mayor's Office of Housing and Community Development (MOHCD). We also interviewed the Office of Contract Administration in the City Administrator's Office for a Citywide overview of procurement practices, particularly as they relate to standardized or department-specific requirements for bidders providing their history of labor law violations.

Through our interviews, we found that City departments generally do not request information about bidders' past labor law violations during the procurement process. Chapter 6 departments reported that they seek to verify that construction project bidders are considered active contractors by the state Department of Industrial Relations (DIR).<sup>1</sup> All departments also reported that they verify that bidders have not been debarred by the City or state, meaning that they would be prevented from bidding on a contract.<sup>2</sup> And after they are under contract, departments are notified if the Office of Labor Standards Enforcement (OLSE) has opened an investigation of a contractor for a potential City labor law violation after they have commenced their work for the City. For prevailing wage violations, a database system is used by OLSE to pro-actively flag violations. It is possible to obtain records related to past labor violations from the federal Department of Labor and the state Department of Industrial Relations, but we found that these

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<sup>1</sup> According to the Department of Industrial Relations (DIR) website, active status requires meeting four responsibilities: registering with DIR, paying prevailing wage, following apprenticeship requirements, and maintaining and submitting certified payroll records.

<sup>2</sup> The Director of the Office of Labor Standards Enforcement reported that debarments are reserved for the "most egregious" violations, such as criminal conduct.

sources are not used by City departments interviewed to independently review bidders' past labor law violations.

As a standard City contracting requirement, language is included in contracts and generally in requests for proposals or requests for qualifications indicating that while under contract, contractors must comply with all relevant laws in the City's municipal codes as well as pertinent state and federal laws. However, none of these requirements speak to any past labor violations by contractors; they are only relevant to violations while under contract.

Several City department representatives interviewed for this project asked about the value of requiring bidders to provide information on past labor law violations. Their questions centered around: 1) how the City would determine whether or not bidders have a pattern of past labor law violations; and 2) if the information is collected, how should it be used? For example, some departments questioned whether a bidder with a history of labor law violations should be disqualified from being awarded a contract or if they should be able to explain the circumstances and how or if the violation had been resolved so that they could still be eligible to be awarded the bid. Department staff and OLSE representatives reported that labor law violations are often due to clerical or administrative oversights by the violating company and do not necessarily represent ongoing practices with significant impact on their workers and subcontractors. Violations due to bookkeeping errors would have to be distinguished from those that represent more significant serial violations that increase the risk of the company repeating such practices if awarded a contract with the City. Some department representatives strongly expressed the need for standardized procedures to fairly respond to any required disclosures of past labor law violations.

### **California Department of Industrial Relations Wage and Judgment Database of Limited Value**

In the absence of a standardized request for information on past labor law violations by entities bidding for City contracts, some information is available from state and federal sources about bidders' past labor violations which could be utilized by City staff to investigate bidders' history. However, this is not a practice in place by any of the City departments interviewed. The Division of Labor Standards Enforcement (DLSE) of the California Department of Industrial Relations adjudicates wage claims on behalf of workers who file claims for nonpayment of wages, overtime, or vacation pay, pursuant to the California Labor Code. The Division also has a Judgment Enforcement Unit to help workers recover unpaid wages.

To investigate the information available from the state Division of Labor Standards Enforcement and in order to assess the degree to which existing San Francisco contractors have violated labor laws and have had judgments made against them in the past, we searched the wage claims and judgment databases of the DLSE for a random sample of contractors for five departments: Department of Public Works (DPW), Department of Homelessness and Supportive Housing (HSH),

San Francisco Metropolitan Transportation Agency (MTA), Mayor’s Office of Housing and Community Development (MOHCD), and the San Francisco Public Utilities Commission. Of the 150 current City contractors that we searched, we found only five with any judgments against them (or, 3 percent).<sup>3</sup> However, we note that a May 2024 state audit of the California Labor Commissioner’s Office (LCO) found that it is not providing timely adjudication of wage claims primarily because of insufficient staffing.<sup>4</sup> The audit found that the LCO is taking a median of 854 days to issue decisions—more than six times longer than the maximum 135 days specified in state law. This delay in judgments may also be causing the number of contractors found to be in violation to be understated. Aside from the judgment amount, the information available is not particularly robust so it is difficult with this information alone to make a determination about the seriousness of the violation and whether or not the company resolved practices or problems associated with the violation(s).

### **Office of Labor Standards Enforcement**

City contractors’ violations of City labor laws can be identified through searches of the City’s Office of Labor Standards Enforcement (OLSE) records. The OLSE responds to complaints charging San Francisco employers or contractors with potential violation of the City’s labor laws. To the extent that complaints about City contractors or bidders have been filed and sustained by OLSE, City departments could independently obtain information about bidders’ past labor law violations. This is not a practice reported by any departments we interviewed.

Our review of OLSE records showed that complaints were received and sustained for 572 City contractors between FY 2018-19 and FY 2022-23.<sup>5</sup> This is another indication that City contractors have histories of violating labor laws, though in many cases, the judgments were fairly low and the violating company is reported to have resolved the problems that led to the violation. As with the state DLSE information discussed above, use of OLSE records for reviewing bidders past labor law violations would need to be calibrated to ensure that repeat violations with significant impact on workers and subcontractors are distinguished from one-time administrative errors. Further, because their cases are complaint-driven, OLSE records are likely missing other companies’ violations that never got reported.

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<sup>3</sup> We note that there is some uncertainty as to whether the judgments are in fact associated with San Francisco contractors due to the possibility that two different businesses share the same name. We did not have any other identifying information for the San Francisco contractors aside from the name of the organization.

<sup>4</sup> California State Auditor, 2023-104 The California Labor Commissioner’s Office: Inadequate Staffing and Poor Oversight Have Weakened Protections for Workers, <https://www.auditor.ca.gov/reports/2023-104/>, May 20, 2024

<sup>5</sup> The total of 572 City contractors removes repeat violators, and is therefore less than the 709 violations cited elsewhere in this report.

Overall, our review of state and City records shows that City contractors do indeed have labor law violation histories that are not detected through the bidding process. However, all violations are likely not recorded in the records available nor are the details of the violations that would help interpret how extensive they were and what, if anything, the violating company has done to correct their problems.

City departments conducting their own investigations of bidders' labor law violations would not be an effective approach to getting this information given the limitations of the sources, though our reviews confirm the presence of labor law violations among City contractors. A more efficient and effective approach to identifying bidders' labor law violation history would be to require them to provide this information as part of the procurement process, under penalty of perjury.

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## **Administrative Code Chapters 6 and 21 Govern City Procurement, along with the State Public Contract Code**

California Public Contract Code Sections 20161 and 20162 mandate that California public works projects be competitively bid. San Francisco Administrative Code Chapters 6 and 21 govern procurement in San Francisco.

### **Chapter 6**

#### *Determining a Responsive Bid and a Responsible Bidder*

The San Francisco Administrative Code Chapter 6 (Public Works Contracting Policies and Procedures) defines a responsible bidder as meeting the following criteria. The definition of responsible bidder does not include past compliance with labor laws. However, it does include disclosure of bidder safety violation records in Point (c):

A responsible bidder:

- (a) meets the qualifying criteria required for a particular project, including without limitation the expertise, experience, record of prior timely performance, license, resources, and bonding and insurance capability necessary to perform the work under the Contract; and
- (b) at all times deals in good faith with the City and submits bids, estimates, invoices, claims, requests for equitable adjustments, requests for change orders, requests for Contract modifications, or requests of any kind seeking compensation on a City Contract only upon a good faith honest evaluation of the underlying circumstances and a good faith, honest calculation of the amount sought; and
- (c) substantiates its record of safe performance on construction projects, including but not limited to consideration of federal or state Occupational Safety and Health Administration ("OSHA") violations and workplace fatalities, including OSHA citations under appeal, in accordance with regulations issued by the City Administrator.



Notably, the definition of responsible bidder was amended by Ordinance No. 113-20 in 2020 to include substantiation of a record of safe performance on construction projects as a required element of responsibility (Point c above). The information provided by bidders is reviewed by departments, and we detail the three-step safety review process later in this report.

A responsive bid is defined in Chapter 6 of the Administrative Code as “a Bid or proposal that complies with the requirements of the subject Advertisement for Bids or request for proposals and/or qualification without condition or qualification” (Section 6.1).

## **Chapter 21**

Chapter 21 of the City’s Administrative Code governs the acquisition of commodities and services. The code section provides for the disqualification of irresponsible contractors for “false claims,” such as submitting a false claim or request for payment or approval. Past labor law violations are not part of this definition.

In the Office of Contract Administration’s Rules and Regulations Pertaining to San Francisco Administrative Code, Chapter 21, “Responsible” and “Responsive” are defined as follows:

- “Responsible” shall mean a responsible Bidder/Proposer or supplier who: (1) meets the qualifying criteria or minimum requirements required for a particular Bid/Proposal, including without limitation the expertise, experience, record of prior timely performance, license, resources, bonding and insurance capability necessary to perform the work under the contract and; (2) at all times deals in good faith with the City and shall submit bids, estimates, invoices, claims, requests for change orders, requests for contract modifications or requests of any kind in a good faith and honest manner.
- “Responsive” shall mean a responsive Bidder/Proposer or supplier that complies with the requirements of the subject Solicitation without condition or qualification.

While Administrative Code Chapters 6 and 21 and the related rules and regulations do not include past labor law violations as part of the definitions of responsible or responsive bidders, neither section precludes City departments from requesting such information from bidders as part of their bidder evaluation and selection processes.

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## Office of Contract Administration and Office of Labor Standards Enforcement Are Central to Developing Procurement Standards and Enforcing Labor Ordinances, Respectively

### Office of Contract Administration Creates Rules and Templates for Procuring Goods and Services

The Office of Contract Administration (OCA) is governed by Chapter 21 of the San Francisco Administrative Code. According to its website, the transactions that go through OCA include:

- **Commodities**, including materials, equipment, and supplies purchased by the City.
- **General Services**, which are defined as those services that are not Professional Services, including janitorial, security guard, pest control, parking lot management, landscaping services, and equipment maintenance services.
- **Professional Services** are defined as “those services which require extended analysis, the exercise of discretion and independent judgment in their performance, and/or the application of an advanced, specialized type of knowledge, expertise, or training customarily acquired either by a prolonged course of study or equivalent experience in the field.” Providers of professional services include, but are not limited to, licensed professionals such as architects, engineers, and accountants, and non-licensed professionals such as software developers and financial consultants.
- **Other Chapter 21 Transactions**, including Equipment Lease Agreements, Software License and Support Agreements, and Online Content Agreements.

Transactions that do not fall under Chapter 21 do not go through OCA, including Chapter 6 (Construction) as well as Chapter 31 (Property Contracts) and Chapter 21G (Grant Agreements). The OCA also offers Citywide term contracts for purchasing common goods and services, and contract templates. The templates were last updated in March 2024 and include reference to bidders complying with the City’s Equal Benefits Program for domestic partners, Health Care Accountability Ordinance, Minimum Compensation Ordinance, Sweatfree programs, the City’s Prevailing Wage laws, and requirements related to contractors’ use of criminal and salary histories in making employment decisions. However, the contract templates do not specify requirements to follow federal and state labor laws while under contract or to report any previous violations.

### Office of Labor Standards Enforcement Investigates Alleged Labor Law Violations, Proactively Enforces Prevailing Wage Requirements, and Seeks Financial Collections on Behalf of Workers

The Office of Labor Standards Enforcement (OLSE) was established in 2001 by ordinance, tasked with enforcing 40 San Francisco labor laws adopted by San Francisco voters and the Board of Supervisors. The Office also educates workers about their rights and helps them file complaints if

their rights have been violated; and guides employers by helping them understand and follow San Francisco labor laws.

### *Common Labor Law Violations in California*

Common forms of labor fraud cited by the California Department of Industrial Relations include:

- **Misclassification** occurs when an employer improperly classifies their employees as independent contractors so that they do not have to pay payroll taxes, minimum wage or overtime, or comply with other wage and hour law requirements such as providing meal periods and rest breaks.
- **Wage Theft** occurs when employers do not pay workers according to the law, such as paying less than minimum wage, not paying overtime, not allowing workers to take meal and rest breaks, requiring off-the-clock work, or taking workers' tips.
- **Workers' Compensation Insurance Fraud** can take various forms, such as health care providers billing for services never performed, employers under-reporting payroll, or attorneys or claims adjusters facilitating fraud.

As detailed below, violations of the City's prevailing wage and minimum compensation laws are the most common types of violations investigated by OLSE. The Office can investigate any employer in the City about whom a complaint is filed or a City contractor.

### **Office of Labor Standards Enforcement Conducted an Annual Average of 142 Investigations per Year of City Contractors Yielding Financial Judgments between 2019 and 2023**

In our review of five years' worth of the Office of Labor Standards Enforcement closed investigation records from Fiscal Years (FY) 2018-19 through 2022-23, we found that 1,129 closed investigations yielded collections: 420 due to violations of general laws and 709 (or, 63 percent) due to violations of City contract laws (meaning the entities served as City contractors and violated applicable contract laws, including prevailing wage requirements, Minimum Compensation Ordinance, and/or the Health Care Accountability Ordinance), as shown in Exhibit 1. As can be seen, most of the violations were of prevailing wage and other labor laws. Contractors may have violated labor laws in other jurisdictions, although this information would only be available through a state DLSE or federal judgment search, or via a request from the contractor during the bidding process.

**Exhibit 1: Prevailing Wage Violations Topped Violations of City Contract Laws**

<b>Total Number of Office of Labor Standards Enforcement Investigations (FY 2018-19 - 2022-23)</b>	
<b>Contract Laws</b>	
Prevailing Wage	645
Minimum Compensation Ordinance / Health Care Accountability Ordinance	45
Health Care Accountability Ordinance	16
Minimum Compensation Ordinance	3
<b>Subtotal</b>	<b>709</b>
<b>General Laws</b>	
Health Care Security Ordinance	268
Minimum Wage Ordinance	47
Paid Parental Leave Ordinance	37
Paid Sick Leave Ordinance	32
Fair Chance Ordinance	11
Formula Retail Employee Rights Ordinance	11
Public Health Emergency Leave Ordinance	6
COVID-Related Employment Protections Ordinance	3
Family Friendly Workplace Ordinance	3
Employee Protection Ordinance	2
<b>Subtotal</b>	<b>420</b>
<b>TOTAL</b>	<b>1,129</b>

Source: Office of Labor Standards Enforcement

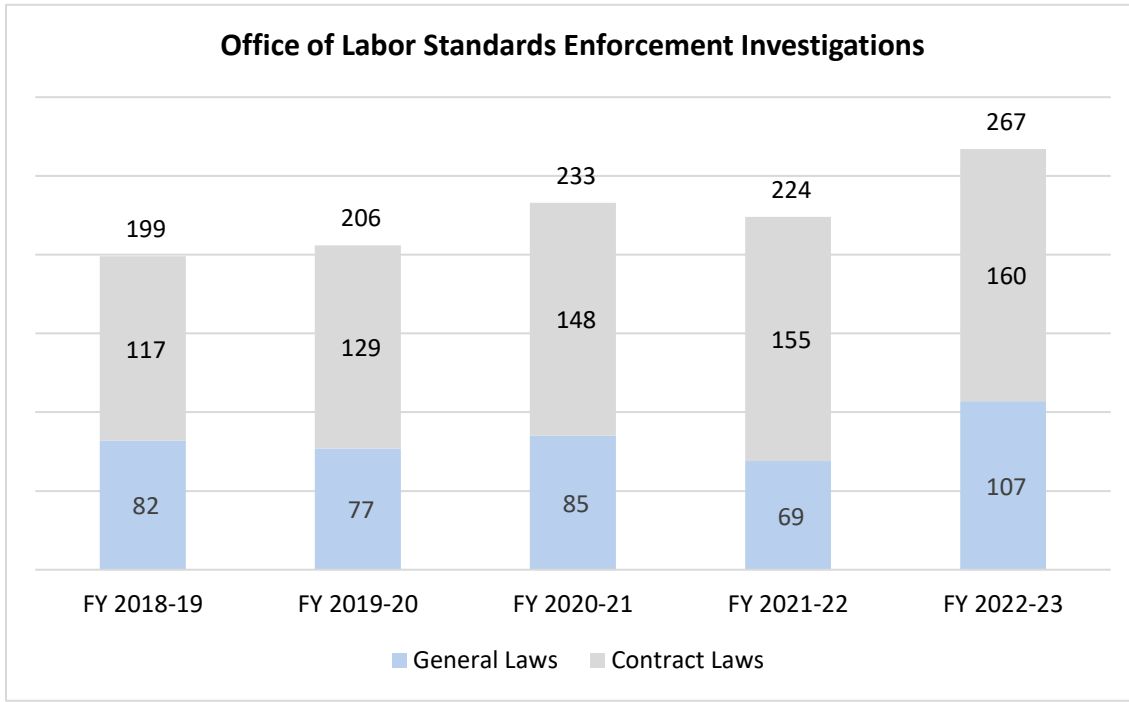
Note: See Appendix I for definitions of each law listed in the table.

Of restitution amounts, a total of \$18,531,798 was imposed on companies violating contract laws, most of them labor laws, over the time period reviewed (FY 2018-19 through FY 2022-23) as can be seen in Exhibit 3. For City contractors, the average restitution amount was \$26,137 between FY 2018-19 and 2022-23.<sup>6</sup> The OLSE records show that some City contractors have a history of labor law violations and, in some cases, have accrued significant judgments exceeding \$100,000 and—in one instance—exceeding \$2 million.

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<sup>6</sup> The average of \$26,137 is based on a total of \$18,531,798 in judgments and 709 investigations of contract laws. For a given case, OLSE collects payments across more than one fiscal year and reports the collections in the fiscal year they are received.

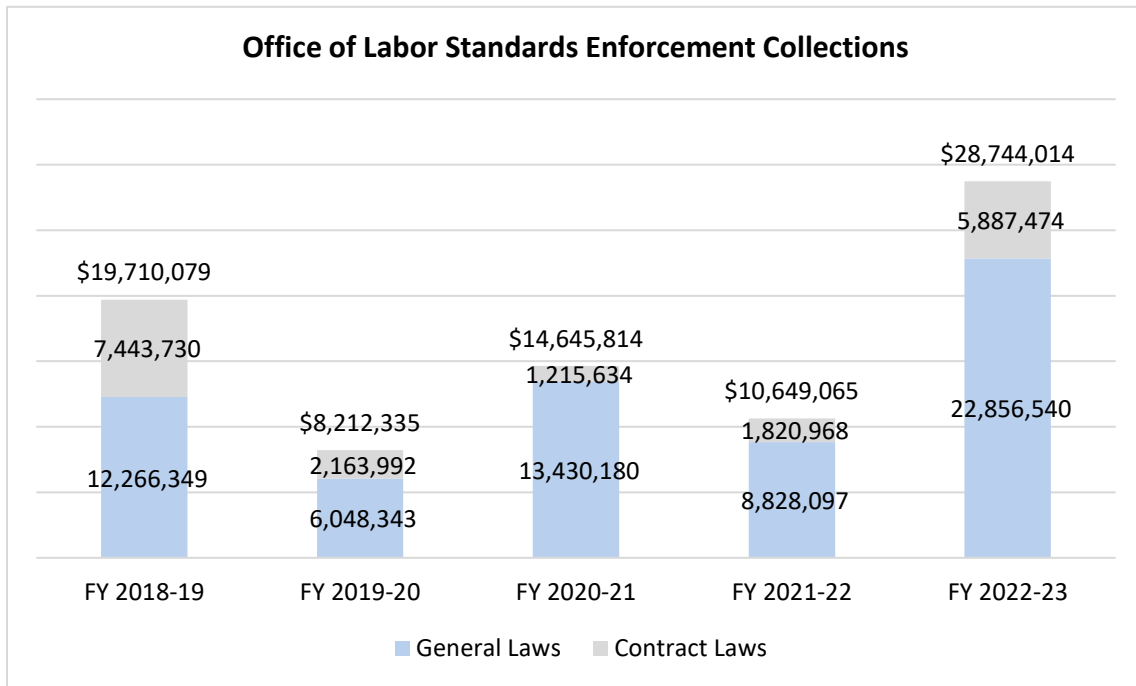
**Exhibit 2: Of all closed Office of Labor Standards Enforcement investigations, 1,129 yielded financial judgments, the majority imposed on City contractors  
FYs 2018-19 to 2022-23**



	2018-19	2019-20	2020-21	2021-22	2022-23	Total	Average
General Laws	82	77	85	69	107	420	84
Contract Laws	117	129	148	155	160	709	142
Total	199	206	233	224	267	1,129	226

Source: Office of Labor Standards Enforcement

**Exhibit 3: Office of Labor Standards Enforcement Collected an Average of \$16 Million Annually, FYs 2018-19 to 2022-23**



	2018-19	2019-20	2020-21	2021-22	2022-23	Total	Average
General Laws	\$ 12,266,349	\$ 6,048,343	\$ 13,430,180	\$ 8,828,097	\$ 22,856,540	\$ 63,429,509	\$ 12,685,902
Contract Laws	7,443,730	2,163,992	1,215,634	1,820,968	5,887,474	18,531,798	3,706,360
Total	\$ 19,710,079	\$ 8,212,335	\$ 14,645,814	\$ 10,649,065	\$ 28,744,014	\$ 81,961,307	\$ 16,392,261

Source: Office of Labor Standards Enforcement

Note: The total dollar amounts for each fiscal year reflect the total collections of each case resolved in the fiscal year but do not necessarily reflect the fiscal year in which the funds were received.

**Chapter 6 Departments Incorporated Bidder Safety Records as part of Bidding Process in 2020, a Possible Model for Considering Bidders' Labor Law History**

Though City departments do not require disclosure of past labor law violations from bidders for City contracts, as of 2020, construction contract bidders are required to disclose their safety records when they submit their bids. This requirement provides an example of what could potentially be done if the City should chose to require bidder disclosures of their labor law violation histories as part of bid submissions from potential City contractors. This safety history requirement also includes features to ensure fairness and effectiveness that should similarly be considered if the City chooses to adopt a labor law violation disclosure requirement for City contract bidders.

Within the last five years, the City modified its procurement of construction contracts to require substantiation of a record of safe performance on construction projects among bidders. This change went into effect in July 2020, following passage of Ordinance No. 20-0443, impacting six departments with construction contract authority: DPW, SF MTA, Airport Commission, Port Commission, PUC, and Recreation and Park Commission.

The 2020 ordinance followed the April 2017 release by the Office of the Controller City Services Auditor of a report, *Citywide Construction: The City Would Benefit From a More Proactive Approach to Construction Safety Management*. The audit made eight recommendations related to enhancing safety, including Recommendation #7 to “Include and consider contractor safety history as a component in the selection process.”

A little over a year after the audit’s release, in August 2018, a signal technician was killed when he was struck by a steel beam at the West Portal side of the Twin Peaks Tunnel. The worker was an employee of Shimmick Construction, which was co-awarded a \$40 million contract by SF MTA. The *San Francisco Chronicle* reported in February 2019: “SF MTA officials said the agency trusted bidders to truthfully respond to a pre-qualification questionnaire. Oakland-based Shimmick Corporation checked a box saying it had no safety violations during the past decade despite having 39 safety violations from Cal/OSHA (Occupational Safety and Health Administration) over that time, officials said.”<sup>7</sup> We searched the national OSHA database and can independently verify safety violations by Shimmick over the past decade; the OSHA database enables City departments to quickly and easily access the safety record of construction bidders.<sup>8</sup>

In October 2018, shortly after the death of the Shimmick employee, a hearing of the Board of Supervisors Government Audit and Oversight Committee took place in which SF MTA presented a safety evaluation proposal for contracts exceeding \$1 million that included two components:

- An Experience Modification Rating (EMR) of 1.0 or less, which is a numerical rating that is used to compare a company’s safety record and worker’s compensation claims history to those of its industry peers. When a business has an EMR lower than 1.0, it indicates a better-than-average safety record.
- Not more than three OSHA violations for willful, serious, serious and willful, or repeat violations of OSHA regulations in the past five years; five violations in the past five years is allowed for large contractors.

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<sup>7</sup> Sernoffsky, Evan, “Cal/OSHA fines companies \$65k for worker death at SF’s Twin Peaks Tunnel,” *San Francisco Chronicle*, <https://www.sfchronicle.com/bayarea/article/Cal-OSHA-fines-companies-63K-for-worker-death-at-13631547.php>, Feb. 20, 2019

<sup>8</sup> Occupational Safety and Health Administration, Establishment Search, <https://www.osha.gov/ords/imis/establishment.html>

In July 2020, an ordinance (No. 113-20) was adopted that built on the definition of the term “Responsible” to include the “substantiation of a record of safe performance” on construction projects. For departments subject to Chapter 6 of the San Francisco Administrative Code Public Works Contracting Policies and Procedures, contractors are required to submit information related to their safety record.<sup>9</sup> The ordinance and its implementing policies requires bidders or proposers for Chapter 6 departments to be screened for safety responsibility, using a three-step screening process.<sup>10</sup> If the firm does not pass Step 1 or Step 2, then the departments use independent third-party safety expert consultants to evaluate the safety record of the bidder based on a pre-established scoring rubric. The scoring rubrics used for document submission is shown in Exhibit 4. The review also includes scoring rubrics for the following areas: injury and lost work rates, serious OSHA violations, willful and repeat violations, and workplace fatalities. DPW reports that contractors typically withdraw from consideration if they cannot clear the safety screening process. The PUC reported that it has conducted 150 construction contract solicitations since the safety screening went into effect, yielding a total of 814 safety reviews and 34 instances in which a firm was disqualified because it could not pass the safety prequalification—a rate of 4 percent.

**Exhibit 4: Third-Party Safety Expert Document Submission Scoring Rubrics**

	Maximum Submission Score
Injury and Illness Prevention Program	10
Drug and Alcohol-Free Workplace Policy	10
Job Hazard Analysis (JHA) Procedure	5
Corporate Safety Manual	5
Injury and Incident Investigation Process	5
Employee Safety Training Programs	5
Safety Field Audit Process	5
Daily Safety Pre-Task Planning Process	5

Source: San Francisco Public Utilities Commission

<sup>9</sup> San Francisco Public Utilities Commission, Prequalify for Construction, <https://www.sfpuc.gov/construction-contracts/contract-opportunities-payments/prequalify-construction>

<sup>10</sup> San Francisco Public Utilities Commission, Safety Prequalification Scoring Rubrics, <https://www.sfpuc.gov/sites/default/files/construction-and-contracts/SafetyPrequalScoringRubrics.pdf>



**Document Content Score:** The third-party safety expert will grade the content of each document and provide a score using the following rubric:

	Below standard – Requires Extensive Improvements	Below standard – Requires Improvements	Below standard – Requires Minor Improvements	Meets Minimum Standard	Exceeds Minimum Standard
Evaluation Score	0	5	10	15	20
Criteria	Contents of the document do not include most of the critical elements as detailed in document-specific guide.	Contents of the document do not include many of the critical elements as detailed in document-specific guide.	Contents of the document do not include some of the critical elements as detailed in document-specific guide.	Document contains all of the critical elements as detailed in the document-specific guide with minimal details.	Document contains all of the critical elements as detailed in the document-specific guide and embodies a commitment to a culture of safety.

Source: PUC

If the City were to adopt a requirement that bidders submit a history of their labor law violations, then it could be advisable to implement an evaluation process similar to the City’s review of bidders’ safety records. Such a process would ensure that bidders’ disclosed information is considered fairly and consistently across all City Departments; specifically, such a process would ensure that minor one-time violations are treated differently than repeated major violations.

### **City of Los Angeles Requires Bidders to Disclose Labor Law Violations but Does Not Routinely Investigate Information Reported**

We reviewed publicly available information related to procurement in other major cities to better understand practices in other jurisdictions. In the City of Los Angeles, the Contractor Responsibility Ordinance requires contractor compliance with all laws: “Contractors shall comply with all applicable federal, state and local laws in the performance of the contract, including but not limited to laws regarding health and safety, labor and employment, wage and hours, and licensing laws which affect employees.” We note that San Francisco’s definition of “Responsible” and “Responsive” do not specify compliance with all applicable federal, state, and local laws, including labor laws.

We interviewed the City of Los Angeles Director of the Department of Public Works Bureau of Contract Administration (BCA), which serves as the citywide contract administration office though it is one of five bureaus in the Department of Public Works. We sought to better understand the City's procedures related to assessing contractors for past labor law compliance, as requested in their Contractor Responsibility Ordinance questionnaire that must be completed by bidders when they submit their bids to city departments.

According to the BCA Director, each city department is required to collect the information requested in the Contractor Responsibility Ordinance Questionnaire, the City's effort to do a background check on bidders: "Each department has its own way of reviewing the questionnaire answers. What is important is that they [the departments] receive the questionnaire." If a bidder fails to submit a completed questionnaire, then they are considered non-responsive. The BCA Director was not aware of city departments conducting routine investigations to verify the information submitted by bidders in their questionnaire responses. The BCA Director reported that it can be easier to

**City of Los Angeles Contractor  
Responsibility Ordinance  
Questionnaire Requires Disclosure of  
Past Violations of Labor and other  
Laws**

*Check Yes in response to Question No. 16 if your firm or any of its owners, partners or officers, have ever been investigated, cited, assessed any penalties, or found to have violated any laws, rules, or regulations enforced or administered, by any of the governmental entities listed below (or any of its subdivisions), including but not limited to those examples specified below. The term "owner" does not include owners of stock in your firm if your firm is a publicly traded corporation. If you answered Yes, provide an explanation of the circumstances surrounding each instance, including the entity involved, the dates of such instances, and the outcome. [See Appendix II for the extensive list of government entities and laws.]*

throw out all bids and re-advertise, rather than conduct an investigation. The Director also reported that the Department of Public Works conducts a first-time bidder investigation: "When we receive bids in the Department of Public Works, we will reach out to the other agencies that this contractor had a contract with and ask them to give us a grade or assessment of them."

The process used by the City of Los Angeles requires bidders to self-report whether they have ever been "investigated, cited, assessed any penalties, or found to have violated any laws, rules, or regulations enforced or administered" (see Question 16 in the sidebar). However, it does not appear that this information is systematically reviewed for verification and taken into account using standardized assessment criteria, in the manner that bidder safety records are considered in San Francisco. However, the BCA Director points out that bidders are required to sign their

disclosures “under penalty of perjury” and if they are later found to have misrepresented themselves on their questionnaires, their contracts would likely be terminated and future opportunities contracting with the City of Los Angeles could be curtailed. For bidders that do disclose past violations, there is no standard approach to be used by departments or any requirement that such bidders be disqualified from contract awards. Departments decide on their own what steps they will take with such disclosures or if violations are identified in contradiction to their signed statements.

Earlier we discussed the City and County of San Francisco requirements and procedures for bidders to disclose any past safety violations. If the San Francisco safety disclosure requirements were used as a model for a requirement for bidders to disclose past labor law violations, the bidding process would incorporate an additional set of procedures and additional staff time in reviewing and analyzing disclosed violations to determine their magnitude and whether or not the bidders should be allowed to proceed with the bidding process. The Los Angeles approach, on the other hand, is more flexible, leaving it up to departments to determine how such disclosures will be treated, potentially requiring less staff time and a less structured process. Departments can choose to obtain more information from vendors who disclose past violations, can choose to disqualify them based on those facts, or can proceed with a contract award if the violations were found to be minor and/or corrected. Adoption of the Los Angeles approach would appear to put less burden on staff than replication of the San Francisco approach now in place for safety violations, but it could result in greater risk in that bidders may not fully disclose past violations or may be treated differently depending on the department to whom they have submitted their bid.

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## Policy Options

1. The Board of Supervisors could consider adopting a process through ordinance where bidders would be required to disclose their history of labor law violations, with disclosures reported to be further evaluated before a contract is entered into or used as a basis for terminating a contract if the information is later found to be inaccurate—or pursuing debarment of a contractor for the most serious violations.
2. If the Board of Supervisors elects to adopt a process requiring that bidders for City contracts disclose their labor law violation history before entering into contracts, it could create a process similar to the one developed for construction safety violations by first modifying the definition of a responsible bidder to include a track record of labor law compliance, including development of a screening system to categorize more serious and less serious labor violations, similar to the City’s screening rubrics in place for safety violations, with all departments following the new procurement procedure in a uniform fashion.

3. The Board of Supervisors could also consider adopting the approach employed by the City of Los Angeles, where bidders are required to disclose any past violations of labor (and other) law, to have that information on record but without any standardized protocol in place for processing such disclosures.

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## Appendix I: Overview of Contract and General Laws

The definitions below are adapted from the Office of Labor Standards Enforcement (OLSE) Laws Overview in the OLSE Annual Report for FY 2022-23.

### Contract Laws

- **Prevailing Wage.** Requires prevailing wage rates for the following: public works contracts; city property sales, transfers and leases; motor bus services; janitorial services; work performed in public off-street parking lots, garages, or auto storage facilities; theatrical workers; solid waste hauling; moving services; workers engaged in exhibit, display, or trade show work at a special event; broadcast services on City property; workers engaged in loading or unloading on City property into or from a commercial vehicle related to a show or special event; and security guard service providers in City contracts or for events on City property.
- **Minimum Compensation Ordinance.** Requires contractors pay a minimum compensation rate and provide paid and unpaid time off.
- **Health Care Accountability Ordinance.** Requires contractors to provide health benefits that meet the minimum standards set by the City.

### General Laws

- **Health Care Security Ordinance.** Requires employers to spend a minimum hourly amount on health care for each covered employee.
- **Minimum Wage Ordinance.** Requires employers in San Francisco to pay employees no less than \$18.67 as of July 1, 2024. The rate will increase based on the Consumer Price Index increase on July 1, 2024.
- **Paid Parental Leave Ordinance.** Requires employers to provide supplemental compensation to employees receiving California Paid Family Leave benefits to bond with a new child.
- **Paid Sick Leave Ordinance.** Requires employers to provide employees paid sick leave for employees' own care and to care for a family member or designated person.
- **Fair Chance Ordinance.** Regulates employers' use of arrest and conviction records in hiring and employment decisions.
- **Formula Retail Employee Rights Ordinance.** Regulates scheduling, part-time work, and hiring at large chain businesses.
- **Public Health Emergency Leave Ordinance.** Provides up to 80 hours of paid leave that employees may use when unable to work due to qualifying reasons related to a Public Health or Air Quality Emergency.
- **COVID-Related Employment Protections Ordinance (March 7, 2021 to March 8, 2023).** Protects workers from losing their jobs (and other adverse action) for reasons related to

- COVID-19, including testing positive or quarantining due to COVID-19 symptoms or exposure.
- Family Friendly Workplace Ordinance. Requires employers to provide flexible or predictable work arrangements for employees with caregiving responsibilities.
  - Employee Protections Ordinance (May 1, 2020 to March 20, 2021). Provides health and safety protections for workers, including the provision of protective equipment, social distancing, and “no contact” delivery options.

## Appendix II: City of Los Angeles Contractor Responsibility Questionnaire Attachment A

SERVICE

### ATTACHMENT A: GOVERNMENTAL ENTITIES FOR QUESTION NO. 16

Check **Yes** in response to Question No. 16 if your firm or any of its owners, partners or officers, have ever been investigated, cited, assessed any penalties, or found to have violated any laws, rules, or regulations enforced or administered, by any of the governmental entities listed below (or any of its subdivisions), including but not limited to those examples specified below. The term "owner" does not include owners of stock in your firm if your firm is a publicly traded corporation. If you answered **Yes**, provide an explanation of the circumstances surrounding each instance, including the entity involved, the dates of such instances, and the outcome.

#### FEDERAL ENTITIES

##### **Federal Department of Labor**

- American with Disabilities Act
- Immigration Reform and Control Act
- Family Medical Leave Act
- Fair Labor Standards Act
- Davis-Bacon and laws covering wage requirements for federal government contract workers
- Migrant and Seasonal Agricultural Workers Protection Act
- Immigration and Naturalization Act
- Occupational Safety and Health Act
- anti-discrimination provisions applicable to government contractors and subcontractors
- whistleblower protection laws

##### **Federal Department of Justice**

- Civil Rights Act
- American with Disabilities Act
- Immigration Reform and Control Act of 1986
- bankruptcy fraud and abuse

##### **Federal Department of Housing and Urban Development (HUD)**

- anti-discrimination provisions in federally subsidized/assisted/sponsored housing programs
- prevailing wage requirements applicable to HUD related programs

##### **Federal Environmental Protection Agency**

- Environmental Protection Act

##### **National Labor Relations Board**

- National Labor Relations Act

##### **Federal Equal Employment Opportunity Commission**

- Civil Rights Act
- Equal Pay Act
- Age Discrimination in Employment Act
- Rehabilitation Act
- Americans with Disabilities Act

#### STATE ENTITIES

##### **California's Department of Industrial Relations**

- wage and labor standards, and licensing and registration
- occupational safety and health standards
- workers' compensation self insurance plans
- Workers' Compensation Act
- wage, hour, and working standards for apprentices
- any provision of the California Labor Code

##### **California's Department of Fair Employment and Housing**

- California Fair Employment and Housing Act
- Unruh Civil Rights Act
- Ralph Civil Rights Act

##### **California Department of Consumer Affairs**

- licensing, registration, and certification requirements
- occupational licensing requirements administered and/or enforced by any of the Department's boards, including the Contractor's State Licensing Board

##### **California's Department of Justice**

#### LOCAL ENTITIES

**City of Los Angeles** or any of its subdivisions for violations of any law, ordinance, code, rule, or regulation administered and/or enforced by the City, including any letters of warning or sanctions issued by the City of Los Angeles for an unauthorized substitution of subcontractors, or unauthorized reductions in dollar amounts subcontracted.

#### OTHERS

**Any other federal, state, local governmental entity** for violation of any other federal, state, or local law or regulation relating to wages, labor, or other terms and conditions of employment.