

EXECUTIVE ORDER NO. 73

October 6, 2005

PREVAILING WAGE REQUIREMENTS IN CITY CONTRACTS

WHEREAS, Section 220 of the Labor Law mandates that contracts for public work contain provisions requiring that each laborer, workman or mechanic employed by a contractor or subcontractor upon such public work shall be paid wages at not less than the prevailing rate for the same trade or occupation in the location where the work is performed, and provided supplements in accordance with the prevailing practices in such location; and

WHEREAS, Section 230 of the Labor Law mandates that contracts for building service work contain provisions requiring that each building service employee employed by a contractor or subcontractor for such building service work shall be paid wages at not less than the prevailing rate for craft, trade or occupation in the location where the work is performed, and provided prevailing supplements; and

WHEREAS, City contracts for public work and building service work contain such provisions, and contractors are subject to contractual remedies and civil penalties for failure to comply with them; and

WHEREAS, it is the intention of this Executive Order to strengthen the enforcement of the prevailing wage requirements of the Labor Law;

NOW, THEREFORE, by the power vested in me as Mayor of the City of New York, it is hereby ordered:

Section 1. The Director of the Mayor's Office of Contract Services (MOCS) shall:

- (a) instruct agencies letting public works or building service work contracts that:
  - (1) where the bid of the apparent low bidder is lower than the bid of the next lowest bidder by more than 10% or \$300,000, whichever is greater, the contracting agency shall require the apparent low bidder to provide proof satisfactory to the contracting agency that the apparent low bidder will:
    - (A) pay its employees prevailing wages and provide prevailing supplements as required by the Labor Law, and
    - (B) require its subcontractors to do the same; and further,

- (2) in determining whether a prospective contractor may receive an award, the contracting agency shall consider whether the contractor will comply with the requirements of the Labor Law concerning prevailing wages and supplements, or any other provision of law, and whether it will require its subcontractors to do the same;
- (b) instruct agencies to submit all bid awards covered by paragraph a, above, for MOCS' review, including but not limited to a review of the contracting agency's determination of the prospective contractor's compliance with the requirements of the Labor Law concerning prevailing wages and supplements;
- (c) periodically review the performance of each City agency with the requirements of paragraph (a), above, in order to determine whether to delegate to the Agency Chief Contracting Officer (ACCO) the function of reviewing and approving any or all of the bid awards otherwise required to be submitted to MOCS pursuant to paragraph (b), above, and/or to determine whether to require any agency to submit additional categories of bid awards for MOCS' review;
- (d) instruct agencies letting public works or building service work contracts that, in their invitations for bids, they shall require contractors to enter into written agreements with their subcontractors prior to the subcontractors commencing work under the contract, and that the written agreements must include prevailing wage and supplement requirements;
- (e) instruct agencies letting public works or building service work contracts that, in their invitations for bids, they shall require contractors to comply with the Labor Law prevailing wage and supplement requirements as material terms of their contracts with the City, and to agree that, in the event a contractor is found liable for a violation of such requirements, the contractor shall be liable to the City for all of its costs in enforcing such requirements;
- (f) in conjunction with agencies letting public works or building service work contracts, develop a training program for prevailing wage investigators and other relevant staff, including a manual containing best practices;
- (g) instruct agencies letting public works or building service work contracts that, in their invitations for bids, they shall require contractors and subcontractors to maintain standard sign-in and sign-out logs, or in the alternative, an equivalent electronic or biometric record-keeping system, subject to the approval of the Director, and to submit such logs and other payroll records to the agencies or the Comptroller upon request, and they shall further inform contractors that failure to comply with the requirements of this paragraph may be grounds for default and/or the withholding of payments due under the contract;
- (h) instruct agencies letting public works or building service work contracts that, in their invitations for bids, they shall require that contractors and subcontractors pay their workers under the contract by check, and that, for contracts worth over

\$1,000,000, and subcontracts worth over \$750,000, such checks must be generated by a payroll service, and that in either case check stubs must contain information sufficient to document compliance with the requirements of the Labor Law concerning prevailing wages and supplements;

- (i) instruct agencies letting public works or building service work contracts to cooperate promptly with requests for information made by the Comptroller pursuant to the authority of the Comptroller under the Labor Law to investigate compliance with the requirements of the Labor Law concerning prevailing wages and supplements;
- (j) in consultation with the Law Department, promulgate standard contract language to effectuate this section;
- (k) in consultation with the Department of Investigation and the agencies letting public works and building services contracts, expand access to appropriate investigation and audit services for purposes of assisting agencies with the monitoring of prevailing wage compliance;
- (l) in consultation with the Department of Investigation and the Department of Information Technology and telecommunications, explore the potential for use of such technological tools as on-line certified payroll submissions, bar-coded worker identification badges, and other mechanisms for enhancing the enforcement of the requirements of the Labor Law concerning prevailing wages and supplements; and
- (m) in consultation with the Department of Investigation, monitor agency compliance with the provisions of this Executive Order on an ongoing basis.

§ 2. Nothing herein shall be construed to limit the authority of agencies to determine whether prospective contractors are responsive or responsible, to require prospective contractors to provide information relevant to such determinations, or to enforce the requirements of the Labor Law or the terms of a contract, in accordance with applicable law.

§ 3. The order shall take effect immediately.

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Michael R. Bloomberg  
Mayor