



THE CITY OF NEW YORK
OFFICE OF THE MAYOR
NEW YORK, N. Y. 10007

EXECUTIVE ORDER NO. 35

September 21, 2023

**COMMITMENT TO ENFORCEMENT OF WAGE REQUIREMENTS AND
STREAMLINING THE PROCUREMENT PROCESS**

WHEREAS, the City of New York continues to be committed to ensuring that all required prevailing and living wages are paid on all public works projects and service contracts; and

WHEREAS, Article 8 of the Labor Law mandates that contracts for public work contain provisions requiring that each laborer, worker 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, Article 9 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 shall be provided prevailing supplements; and

WHEREAS, the Living Wage Law, as set forth in section 6-109 of the Administrative Code, mandates that a city service contractor or city service subcontractor that provides homecare services, day care services, head start services or services to persons with cerebral palsy pay its covered employees that directly render such services in performance of the city service contract or subcontract no less than the living wage and either provide its employees health benefits or supplement their hourly wage rate by an amount no less than the health benefits supplement rate; and

WHEREAS, the Living Wage Law also mandates that a city service contractor or city service subcontractor that provides building services, food services or temporary services pay its employees that are engaged in performing the city service contract or subcontract no less than the living wage or the prevailing wage, whichever is greater; and

WHEREAS, section 6-109.1 of the Administrative Code requires that a shelter operator or covered guard service company that employs covered guards at a shelter shall pay such guards no less than the prevailing wage determined in a manner consistent with the requirements of section

234 of the Labor Law, and provides that the obligation of a shelter operator or covered guard service company to pay prevailing supplements may be discharged by furnishing any equivalent combinations of fringe benefits or by making equivalent or differential payments in cash under rules and regulations promulgated pursuant to section 6-109.1; and

WHEREAS, the City continues its commitment to streamline and minimize redundancies and paperwork burdens in the procurement process in order to save time and costs; and

WHEREAS, the pre-award review provisions of Executive Order 102 of 2007, and its predecessor, Executive Order 73 of 2005, added layers of duplicative, costly, and lengthy reviews that added time and costs to City contracts; and

WHEREAS, since 2007, the City has put in place a number of measures to ensure compliance with prevailing wage requirements, including the Standard Construction Contract (which includes specific language on prevailing wage enforcement) and Project Labor Agreements with the Building and Construction Trades Council; and

WHEREAS, City agencies typically review, among other things, compliance with the Labor Law and the Living Wage Law and other laws described in this Order as part of determining the responsibility of a vendor; and

WHEREAS, contract management staff at City agencies, such as project manager, in-house engineering and technical staff, labor law investigators, and audit officers, typically monitor compliance with Labor Law during a vendor's performance of a contract and refer vendors to the Comptroller's Office, Bureau of Labor Law for further investigation and enforcement;

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

Section 1. The Director of the Mayor's Office of Contract Services ("MOCS") shall instruct agencies letting public works or building service work contracts that their solicitation documents and contracts shall:

(a) require contractors to enter into written agreements with their subcontractors, prior to the subcontractors commencing work under the contract, which shall include applicable prevailing wage and supplement requirements;

(b) require contractors to comply with the applicable prevailing wage and supplement requirements of Articles 8 and 9 of the Labor Law as material terms of their contracts with the City, and 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 its costs in enforcing such requirements;

(c) require contractors and subcontractors to maintain standard sign-in and sign-out logs, or in the alternative, and subject to the approval of the Director of MOCS, an equivalent electronic or biometric recordkeeping system;

(d) require contractors and subcontractors to submit such logs and other payroll records to the contracting agency or the Comptroller upon request;

(e) require contractors and subcontractors to pay their workers under the contract by check, which, in the case of contracts worth over \$1,000,000, and subcontracts worth over \$750,000, shall be generated by a payroll service or automated payroll system (an in-house system may be used, subject to the approval of the agency), and in either case provide on each check stub or on other similar documentation provided to the employees information sufficient to document compliance with the requirements of the Labor Law concerning prevailing wages and supplements; and

(f) inform contractors that failure to comply with the requirements outlined in this section may be grounds for default and/or the withholding of payments due under the contract.

§ 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 or any other provision of law concerning prevailing wages and supplements, and whether it will require its subcontractors to do the same.

§ 3. The contracting agency shall cooperate promptly with requests for information made by the Comptroller pursuant to the Comptroller's authority to investigate compliance with the requirements of the Labor Law concerning prevailing wages and supplements.

§ 4. The Director of MOCS shall instruct all contracting agencies entering into contracts subject to sections 6-109 and 6-109.1 of the Administrative Code ("Employee Wage Protection Requirements") that they shall require contractors to:

- (a) enter into written agreements with their subcontractors, prior to the subcontractors commencing work under the contract, which shall include provisions relating to wages, supplements and health benefits required by the applicable Employee Wage Protection Requirements; and
- (b) comply with the applicable Employee Wage Protection Requirements as material terms of their contracts with the City, and 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 the costs in enforcing such requirements.

§ 5. In city service contracts and solicitation documents for such contracts, the contracting agency shall require that contractors and subcontractors pay their workers under the contract by check, which, in the case of contracts worth over \$1,000,000, and subcontracts worth over \$750,000, shall be generated by a payroll service or automated payroll system (an in-house system may be used, subject to the approval of the agency), and in either case provide employees check stubs or other documentation at least once each month containing information sufficient to document compliance with the requirements of the Living Wage Law concerning living wages, prevailing wages, supplements and health benefits.

§ 6. The contracting agency shall cooperate promptly with requests for information by agencies authorized to investigate compliance with the requirements of the Living Wage Law.

§ 7. The City shall continue to 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 such requirements.

§ 8. 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, the Employee Wage Protection Requirements, or the terms of a contract, in accordance with applicable law.

§ 9. Nothing herein shall be construed to limit the authority of the Law Department and MOCS to continue to work with City agencies to ensure that City contracts, renewals, amendments, and modifications comply with applicable provisions of the Labor Law and the Employee Wage Protection Requirements.

§ 10. Executive Order 102 of 2007 is hereby revoked.

§ 11. This Order shall take effect immediately.



Eric Adams
Mayor