

EXECUTIVE ORDER No. 102

July 18, 2007

PREVAILING WAGE AND LIVING 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, section 6-109 of the Administrative Code, known as the "Living Wage Law," defines a "prevailing wage," "living wage" and "health benefits supplement rate" for purposes of "city service contracts," which include written agreements between any entity and a contracting agency whereby a contracting agency is committed to expend or does expend funds and the principal purpose of such agreement is to provide homecare services, building services, day care services, Head Start services, services to persons with cerebral palsy, food services or temporary services where the value of the agreement is greater than the City's small purchases limit pursuant to section 314 of the City Charter, but do not include contracts with not-for-profit organizations other than not-for-profit organizations providing homecare, Head Start, day care and services to persons with cerebral palsy, and do not include contracts awarded pursuant to the emergency procurement procedure as set forth in section 315 of the City Charter; and

WHEREAS, the Living Wage Law 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 that where the living wage is greater than the prevailing wage, the city service contractor or city service subcontractor must either provide its employees health benefits or must supplement their hourly wage rate by an amount no less than the health benefits supplement rate, and that where the prevailing wage is greater than the living wage, the city service contractor or city service subcontractor must provide its employees the prevailing wage and supplements as provided in the Labor Law; and

WHEREAS, City service contracts contain provisions mandated by the Living Wage Law, 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 requirements of the Labor Law and the Living Wage 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 instruct agencies letting public works or building service work contracts that:

- a. where the bid of the apparent low bidder is lower than the bid of the next lowest bidder by 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 pay its employees prevailing wages and provide prevailing supplements as required by the Labor Law, and require that its subcontractors do the same;
- b. in their invitations for bids, the contracting agency shall:
 - (1) require contractors to enter into written agreements with their subcontractors, prior to the subcontractors commencing work under the contract, which shall include prevailing wage and supplement requirements;
 - (2) require contractors to comply with the Labor Law prevailing wage and supplement 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 its costs in enforcing such requirements;

- (3) 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, an equivalent electronic or biometric record-keeping system;
 - (4) require contractors and subcontractors to submit such logs and other payroll records to the contracting agency or the Comptroller upon request;
 - (5) 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 chief contracting officer ("ACCO")), and in either case provide check stubs or other documentation to the employees at least once each month containing information sufficient to document compliance with the requirements of the Labor Law concerning prevailing wages and supplements; and
 - (6) 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;
- c. 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;
 - d. the contracting agency shall 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; and
 - e. 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.

§ 2. The Director shall instruct agencies letting city service contracts subject to the Living Wage Law that:

- a. where the bid of the apparent low bidder is lower than the bid of the next lowest bidder by 10% or \$100,000, 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 pay its employees wages and provide benefits or supplements as required by the Living Wage Law, and require that its subcontractors do the same;
- b. 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 Living Wage Law concerning wages and benefits, or, if applicable, the provisions 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;
- c. the contracting agency shall 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 Living Wage Law concerning wages and supplements or benefits;
- d. in invitations for bids for city service contracts, the contracting agency shall require contractors to:
 - (1) 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 Living Wage Law;
 - (2) comply with the requirements of the Living Wage 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 the costs in enforcing such requirements;
- e. in invitations for bids for city service 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 ACCO), 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; and

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

§ 3. MOCS shall:

- a. periodically review the performance of each City agency with the requirements of this Order, in order to determine whether to delegate to the agency's ACCO the function of reviewing and approving any or all of the bid awards otherwise required to be submitted to MOCS pursuant to sections 1 and 2 above, and/or to determine whether to require any agency to submit additional categories of bid awards for MOCS' review;
- b. in conjunction with agencies letting public works or building service work contracts, and city service contracts subject to the Living Wage Law, develop training programs for prevailing wage investigators and other relevant staff, including a manual containing best practices;
- c. instruct agencies letting city service contracts for building services, food services or temporary services that, in their invitations for bids, they shall require contractors and subcontractors to submit copies of payroll records, certified by the city service contractor under penalty of perjury to be true and accurate, to the contracting agency with every requisition for payment;
- d. instruct agencies letting city service contracts for homecare, day care, Head Start or services to persons with cerebral palsy, that in their invitations for bids, they shall require the contractor to submit with any requests for payment categorical information about the wages, benefits and job classifications of covered employees of the city service contractor, and of any city service subcontractors required by the Living Wage Law;
- e. in consultation with the Department of Investigation and the agencies letting public works and building services contracts and city service contracts subject to the Living Wage Law, expand access to appropriate investigation and audit services for purposes of assisting agencies with the monitoring compliance with requirements relating to prevailing wages and supplements, living wages and health benefits;
- f. 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 such requirements;

- g. in consultation with the Department of Investigation, monitor agency compliance with the provisions of this Executive Order on an ongoing basis; and
 - h. in consultation with the Law Department, promulgate standard contract language to effectuate this section.
- § 4. 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 Living Wage Law, or the terms of a contract, in accordance with applicable law.
- § 5. Executive Order 73 of 2005 is revoked.
- § 6. This order shall take effect immediately.

Michael R. Bloomberg
Mayor