



Board of Public Works

Nancy K. Kopp, Treasurer **Martin O'Malley, Governor** **Peter Franchot, Comptroller**

Advisory No.: 2007-1
Issue Date: September 27, 2011
Subject: Living Wage
Effective: Immediately

Sheila McDonald, Esq.
Executive Secretary
Mary Jo Childs, Esq.
Procurement Advisor
Gregory Bedward
General Counsel
Doldon Moore
Wetlands Administrator

5th Revision

Purpose: To set forth procedures for procurement agencies to implement the Living Wage Law. The Living Wage Law generally requires contractors and subcontractors to pay at least the Living Wage to their employees who work under procurement contracts that provide services to the State. As always, there are exceptions to the general rule.

Authority: Sections 18-101 through 18-109, State Finance and Procurement Article, Annotated Code of Maryland; COMAR 21.11.10.

General Rule: Generally, the Living Wage Law requires contractors and subcontractors on State services contracts to pay employees working under the contract a wage of:

- \$12.49 per hour (effective 9/27/11) for Tier 1 counties: Montgomery County, Prince George's County, Anne Arundel County, Howard County, Baltimore County, and Baltimore City
- \$9.39 per hour (effective 9/27/11) for Tier 2 counties: The remaining 18 counties

Note: The Commissioner of Labor and Industry adjusts the Living Wage rate annually no later than 90 days following the start of each fiscal year.

What is a services contract? A "service" is "the rendering of time, effort, or work, rather than the furnishing of a specific physical product other than reports incidental to the required performance." "Service" includes maintenance, banking and financial services, and information technology services. "Service" does not include construction, construction-related services, architectural and engineering, printing, energy performance contracts, real property, information technology hardware or software, or the purchase of supplies. COMAR 21.11.10.01

Applicability:

- A prime contractor with more than 10 employees must comply with the Living Wage Law if the services contract is valued at \$100,000 or more.
- A prime contractor with 10 or fewer employees must comply with the Living Wage Law if the services contract is valued at \$500,000 or more.
- A sub-contractor must comply with the Living Wage Law only if: (a) the prime contractor must comply with the Law; and (b) the subcontractor meets the same criteria for applicability as described for a prime contractor.





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- On a master contract where task orders are competed among the contractors, these applicability factors apply to the task order.

Contract value is determined by adding the value of the base period and the value of all option periods. If the Law does not apply to a contract because the contract's value is under the threshold, and that contract is later modified to exceed the threshold, the Law continues to "not apply" to that contract.

Exceptions:

The Living Wage does not apply to services contracts:

- Under \$100,000
- Under \$500,000 when the contractor has 10 or fewer employees
- For services needed immediately to prevent or respond to an imminent threat to public health or safety
- With a public service company (e.g., taxi services, utility companies)
- With a nonprofit organization
- Between procurement units
- Between a procurement unit and a county or Baltimore City (although local Living Wage laws may apply)
- Where application of the Living Wage Law would conflict with federal requirements

Procedure:

First, determine whether the Living Wage Law applies to your procurement.

Determine whether you are soliciting "services" as defined above. If so, then determine whether the procurement falls into one of the exceptions listed above. Include Living Wage language in the solicitation unless it is clear that your services contract is not subject to the Living Wage Law. Suggested solicitation language may be found in Attachment A (competitive sealed proposals) and Attachment B (competitive sealed bids), and Attachment C (sole source). Include also the Living Wage Affidavit of Agreement (Attachment D). A bidder or offeror's failure to submit a properly-executed Living Wage Affidavit of Agreement presents a responsibility issue, not a responsiveness issue.

Next, determine which Wage Tier applies.

Determine if services will be performed in a Tier 1 or a Tier 2 county. Include that determination in the solicitation.

- If the services valued at 50% or more of the total contract value will be performed in a Tier 1 county, the covered employees must be paid at least \$12.49 per hour.





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- If the services valued at 50% or more of the total contract value will be performed in a Tier 2 county, the covered employees must be paid at least \$9.39 per hour.
- If the services may be provided in both Tier 1 and Tier 2 counties, the procurement unit head shall set the wage based on the Tier where the majority of the services are performed.
- If the procurement officer cannot determine where services will be provided, the procurement officer should ask bidders or offerors to identify the Tier in which the majority of services will be provided.
- If the services will be performed out-of-State, the procurement unit head shall set the wage based on the Tier where the majority of the clients (services recipients) are located.

Note: The procurement unit makes a determination only whether a contract is a Living Wage contract and which is the appropriate Tier wage rate to set for the contract. The contractor, in compliance with Commissioner of Labor and Industry regulations, determines which employees must be paid the Living Wage. COMAR 21.11.10.02.

Finally, record the solicitation in eMaryland Marketplace.

Post a solicitation notice for all potential Living Wage contracts in eMaryland Marketplace. Once an award is made, post the contract award (including the contractor's name and the contract value) in eMaryland Marketplace.

Agency Reporting Requirements: The Department of Legislative Services will conduct a study on the fiscal and economic impacts of the Living Wage Law on the public and private sectors. The Department of Legislative Services will determine its data requirements and the reporting format.

Questions on enforcement of the Living Wage may be addressed to:

Division of Labor and Industry
Living Wage Section
1100 North Eutaw Street, Room 607
Baltimore, Maryland 21201
410-767-2342
Fax: 410-333-7303
email: livingwage@dllr.state.md.us

Questions on this Advisory may be addressed to:

Board of Public Works
80 Calvert Street, Room 117
Annapolis, Maryland 21401
410.260.7335
Toll Free: 877-591-7320
Fax: 410-974-5240
email: mhodes@comp.state.md.us

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