

MARYLAND'S LIVING WAGE FREQUENTLY ASKED QUESTIONS

1. *What is the Living Wage?*

Governor Martin O'Malley signed a bill into law establishing Maryland's Living Wage. The new law is effective as of October 1, 2007. The Living Wage Law requires certain contractors and subcontractors to pay minimum wage rates to employees working under certain State services contracts. The Living Wage Law currently requires the payment of the Living Wage of either **\$12.25 per hour, effective September 28, 2009** or **\$9.21 per hour effective September 28, 2009** depending upon the jurisdiction where the services are performed. The State Living Wage does not apply to county and municipal contracts although some local governments such as Montgomery County and Baltimore City have their own living wage requirements. **This law applies prospectively only to contracts awarded after October 1, 2007.**

2. *How is a Living Wage different from the current Prevailing Wage Law?*

The long-established prevailing wage applies to contractors and subcontractors under government *public works* contracts over \$500,000 when State public funds are used to provide 50% or more of the funds for the construction of any project. The Living Wage applies to most *services* contracts, including maintenance contracts. Like the Living Wage, the Prevailing Wage is set annually by the Commissioner of Labor and Industry.

3. *Does the Living Wage apply to all types of State services contracts?*

No. The Living Wage Law applies to State services contracts and subcontracts for services under Title 21 awarded on or after October 1, 2007. The procurement regulations define a contract for "services" as one for "the rendering of time, effort, or work rather than the furnishing of a specific physical product other than reports incidental to the required performance." The term "service contract" includes maintenance services, information technology services, but does not include construction, construction-related services, architectural and engineering services, energy performance contracts, supplies (including commodities and printing), real property, or the purchase of goods.

4. *What State service contracts are exempt from the Living Wage Law?*

The Living Wage Law exempts State service contracts that are:

- under \$100,000 in value;
- under \$500,000 in value if the contractor has 10 or fewer employees;
- for services needed immediately to prevent or respond to imminent threat to public health or safety (emergency procurements);
- less than 13 weeks in duration;
- with a public service company;
- with a non-profit organization;

- between units (interagency agreements); or
- between a unit and a county or Baltimore City.

The Living Wage Law exempts State service contracts where application of the Title would conflict with federal program requirements.

Agencies exempt from State procurement law, such as the University System, Morgan State University, and the Stadium Authority, are not required to comply with the Living Wage laws (see State Finance and Procurement Article, §11-203, Maryland Code).

Assuming that the contract value and number of employee thresholds are met, contracts subject to the Living Wage include:

- sole source services contracts;
- services contracts acquired through competitive sealed proposals, competitive sealed bidding, negotiated award after unsatisfactory competitive sealed bidding, expedited procurements, and non-competitive negotiated procurement of Human, Social or Educational Services;
- unsolicited proposals for health or human services, educational services, or business and economic development services; and
- Intergovernmental cooperative purchasing agreements when sponsored by a Maryland agency.

5. *Are options that occur on or after October 1, 2007 covered by the Living Wage Law if the original (base) contract was approved prior to October 1, 2007?*

No. The law applies prospectively and applies to contracts awarded after October 1, 2007.

6. *When is a prime contractor covered by the Living Wage Law?*

A contractor with more than 10 employees is covered when the State contract for services is valued at \$100,000 or more. A contractor with 10 or fewer employees is only covered when the State contract for services is valued at \$500,000 or more.

7. *When is a subcontractor covered by the Living Wage Law?*

A subcontractor is only covered if the prime contractor for the State contract for services at issue is covered, and:

- The subcontractor is not otherwise excluded and has more than 10 employees and is performing services on a State contract for services valued at \$100,000 or more; or
- A subcontractor is not otherwise excluded and has 10 or fewer employees and is performing services on a State contract for services valued at \$500,000 or more.

8. *How is contract value determined?*

Contract value is determined by adding the value of the base period plus all option periods.

9. *What about a contractor (or subcontractor) that is not initially covered because of the value of the contract, but, due to a modification or change order, the contract value is increased and then exceeds the value thresholds?*

A contractor or subcontractor that is not initially covered due to value (e.g., a contract of \$75,000) remains exempt. An agency may not artificially divide a procurement to avoid application of the Living Wage Law.

10. *What about a contractor (or subcontractor) that is not initially covered because the contractor (or subcontractor) has 10 or fewer employees at the time they submit their bid or proposal, but that subsequently hires an 11th employee?*

A contractor/subcontractor that is not initially covered due to number of employees remains exempt on that contract.

11. *In determining whether an employer has 10 or fewer employees, are part time employees included? In other words, is an employer with 5 full time and 6 part time employees covered?*

Part time positions will be added to equate to full time equivalents (FTEs). A 40 hour week will be used as the standard, unless the contractor provides evidence that they define full time by a lower number of hours (e.g., 35 hours). For example, under a 40 hour work week, two individuals working 20 hours each equate to one FTE.

12. *Which employees must be paid a living wage?*

Covered prime contractors and covered subcontractors must pay the living wage to employees who:

- are 18 years old, or will turn 18 during the contract;
- work at least 13 consecutive weeks on the contract; and
- work at least one-half of their time during any week on the State contract.

13. *For employees who turn 18 during the contract term, are they to receive a living wage from day one of the contract (before they turn 18) or from the day they turn 18?*

Living wage applies from the start of the contract or the start of employment (whichever is later) for those covered employees who are under 18 but are anticipated to turn 18 while they are still employed on the contract.

14. *For covered employees, must they be paid living wage for those hours they are not working on State contract business?*

No. Living wage must be paid only for those hours spent on State contract business.

15. *What are the wage rates?*

There are two wage “tiers” established in Maryland - Tier 1 includes Montgomery County, Prince George’s County, Howard County, Baltimore County, Baltimore City, and Anne Arundel County. Tier 2 is comprised of the counties not included in Tier 1. The living wage rate for **Tier 1 is \$12.25 per hour, effective September 28, 2009** and the rate for **Tier 2 is \$9.21 per hour effective September 28, 2009**.

16. *What if my business has operations in areas with two different wage tiers? Which rate should I pay?*

The wage tier is determined by the area where services valued at 50% or more of the total contract value is performed. For example, if 45% of contracted services are performed in a Tier 1 area and 55% of the services are performed in a Tier 2 area, the wage for all eligible employees is Tier 2 because Tier 2 is the region where 50% or more (55%) of the services are performed.

17. *What if my business has all of its operations out of state? Am I required to pay the Maryland Living Wage?*

Yes. If the employees who perform the services are not located in either Tier 1 or Tier 2, the procurement officer will assign the tier(s) based upon where the majority of the recipients of the services are located.

18. *What are the possible adjustments to the Living Wage?*

The Commissioner of Labor and Industry is in charge of annually adjusting the living wage rates based upon the consumer price index for the previous calendar year. An employer may commit in its bid or proposal that it will provide health insurance and may reduce the living wage by all or part of the hourly cost of the employer’s share of the premium. An employer may also reduce the living wage by no more than 50 cents of the hourly cost of the employer’s contribution to an employee’s deferred compensation plan.

19. *How is the annual rate adjustment calculated?*

Each year within 90 days of July 1, the Commissioner of Labor and Industry will adjust the Living Wage rate by the annual average increase or decrease, if any, in the consumer price index (CPI) for all urban consumers for the Washington-Baltimore metropolitan area or any successor index for the previous calendar year. In determining the annual average increase or decrease, the Commissioner of Labor and Industry will determine the percentage change in the level of the CPI from one year to the next.

20. *What are the contractor and subcontractor obligations when the living wage increases?*

During the term of the contract contractors and subcontractors must pay the living wage in effect, including any living wage increase, from the date of such increase.

21. *If the living wage increases during the term of a contract, can the contractors submit a request for a contract price increase?*

No. Bidders/Offerors typically have to project inflation costs over the term of multi-year contracts; this is simply another situation of when they will have to do that. Moreover, if a contract includes a provision for price revision based upon changes in the Consumer Price Index (CPI), since changes in the living wage are indexed to changes in the CPI, a CPI adjustment would automatically allow for recouping some/all of the living wage adjustment.

22. *How will the Commissioner determine if the employer's deduction for health insurance is appropriate?*

The Commissioner of Labor and Industry will require that an employer who deducts the hourly cost of the employer's share of an employee's health insurance premium from an employee to submit documentation of the employer's cost and proof of payment for each employee under the health insurance plan, the methodology that the employer uses to determine the hourly amount of health insurance deduction for each employee, documentation of the employee's insurance election, and copies of payroll records. From this information, the Commissioner will first determine the cost per employee for health insurance, and then audit the payroll records to verify that the deductions are appropriate.

23. *Who is required to report payroll records?*

Any employer with a State contract for services subject to the Living Wage law is required to submit payroll records for all employees performing work in connection with that State contract for services. Each contractor is responsible for ensuring that the subcontractors' payroll records are submitted in a timely manner.

24. *For which employees is the employer required to submit payroll data?*

Any employer with a State contract for services subject to the Living Wage law is required to submit payroll records (including the data required by COMAR 21.11.10.05(D)) for *all* employees who perform work in connection with the State contract for services, even those who are under 18 years old, spend less than one-half of the employee's time performing work on the contract, may work less than 13 consecutive weeks and full time on the State contract for services, or who are currently being paid more than the living wage rate.

25. *When must the employer submit the payroll records?*

An employer required to submit payroll records must do so within 14 days after the end of each payroll period.

26. *Why does the Commissioner of Labor and Industry require employers to submit payroll records and other data?*

The Commissioner of Labor and Industry requires that employers submit payroll records and other data as part of the enforcement process. Upon receipt of this information, the Commissioner of Labor and Industry will review the records and data to ensure that the appropriate Living Wage rate has been paid. Enforcement through review of payroll records has been demonstrated as a proven enforcement method in the Prevailing Wage program. In addition, some studies of other jurisdictions' Living Wage programs have recommended payroll submission as the most effective enforcement tool. The timely submission and review of payroll records will help to ensure that employees receive their proper wages.

27. *What data, other than payroll records, is the employer required to report?*

Any employer with a State contract for services subject to the Living Wage law who reduces the wages paid to its employees covered by the Living Wage based upon the employer's share of the health insurance premium must provide documentation to support the deduction as well as documentation reflecting the employee's authorization of the deduction, as detailed in COMAR 21.11.10.05(A). If an employer reduces the wages paid to its employees based upon the employer's contribution to an employee deferred compensation plan, the employer must provide the Commissioner with the name of the employee deferred compensation plan, proof that the deductions from the wages is being deposited in a bona fide deferred compensation plan and signature cards or other documentation reflecting that the employee has authorized a deduction for the employee deferred compensation plan, as detailed in COMAR 21.11.10.05(A). The employer must also provide a list of the three most commonly used languages at the worksite, a copy of the Commissioner's "Subcontractor and Employee Information Form" and other information required by the Commissioner.

28. *For Task Order Master Contracts awarded on/after October 1, 2007, do the Living Wage Law standards apply to the Master Contract or at the Task Order level?*

The Living Wage Law applies on a Task Order basis. Each Task Order stands alone.

29. *How do Living Wage Law standards apply to multiple award indefinite quantity contracts?*

For multiple award indefinite quantity contracts, the projected total award amount over the life of the contract may trigger Living Wage standards for contractors and should be disclosed to vendors prior to bid/offer submission. When the projected value of the contract is less than \$100,000 then the Living Wage Law does not apply. When the projected value of the contract is \$500,000 then the Living Wage applies to all contractors and subcontractors for all services provided. When the projected value of the contract is \$100,000 or more, but less than \$500,000, then the Living Wage applies to contractors and subcontractors for services with more than 10 employees.

30. What do we do with bids conducted without living wage language and which have been publicly opened but contracts will not be awarded until October 1 or after?

- A. Allow the low bidder the opportunity to retain the award at the existing low-bid price if it agrees to meet the Living Wage Law requirements within its price. In this case, the agency should amend the contract to include the Living Wage Law language for Sole Source contracts.
- B. If the low bidder will not meet the Living Wage Law requirements at its existing low-bid price, the agency should:
 - re-bid;
 - if there is no time to re-bid, then the agency may use the Negotiated Award After Unsuccessful Sealed Bidding method. In this case the agency would notify all responsible bidders who submitted responsive bids of the Living Wage Law requirements and allow them to submit a new bid incorporating the Living Wage Law requirements; or
 - In extraordinary circumstances, an agency may even consider making an emergency award. Emergency awards are exempt from the Living Wage Law.

31. What do we do with competitive sealed proposals that have been conducted without the Living Wage Law language and for which proposals have been received?

- A. If no selection has been made (i.e., no offeror has been notified that it has been recommended for award), the agency should amend the Request for Proposals to include the Living Wage Law requirements and request a Best and Final Offer.
- B. If an offeror has been notified that it has been selected for award, regardless of whether prices have been disclosed to any offeror, the selected offeror should be provided an opportunity to agree to meet the Living Wage Law requirements at its current financial offer price.
 - If the selected offeror agrees to meet the Living Wage Law requirements within its current financial offer, the contract should be amended to include the Living Wage Law language for Sole Source contracts.
 - If the selected offeror does not agree to meet the Living Wage Law requirements within its current financial offer, the Request for Proposal should be amended to include the Living Wage Law requirements with a Best and Final Offer requested from all offerors.

32. If a bidder does not submit the required Living Wage affidavit with a bid, is it treated as an issue of responsiveness (not curable) or as an issue of responsibility (is curable)?

Failure to submit a properly completed Living Wage affidavit should be treated as an issue of responsibility, even for a bid. The bidder or offeror is merely being asked to acknowledge its responsibility to comply with the law. Therefore, an agency may allow a bidder to submit the required affidavit after bid opening as long as it is done within a timely fashion. If a bidder is advised that it omitted the affidavit but still does not provide the affidavit within a

reasonable time, as determined by the agency, the bidder may be determined to not be responsible and the agency has the option of collecting on the bid bond.

33. *What role do State Agencies have in implementing the Living Wage and how will contractors know whether a State solicitation is subject to the Living Wage Laws?*

If the procurement officer determines the Living Wage is applicable, the State agency will include Living Wage requirements in the solicitation including which wage tiers apply. The procurement officer for each State Agency subject to the Living Wage will make a determination if more than 50% of the total value of the contract services will be performed in the Tier 1 area or in the Tier 2 area.

34. *Who is responsible for enforcement of the Living Wage Law?*

The Commissioner of Labor and Industry is in charge of enforcement. If there is a violation of the Living Wage Law, the Commissioner can order restitution to each affected employee as well as damages. Employees also have the right to sue to recover wages.

35. *How will DLLR be notified that a living wage contract has been awarded?*

Remember, when the contract value is less than \$100,000 the Living Wage Law does not apply. When the contract value is \$500,000, then the Living Wage Law applies to all contractors and subcontractors for services. When the contract value is \$100,000 or more, but less than \$500,000, then the Living Wage Law applies to contractors and subcontractors for services with more than 10 employees. When entering contract information concerning a services contract into *eMarylandmarketplace*, procurement officers will indicate whether the contract is potentially subject to the Living Wage Law and complete the requested information.

36. *Who can I contact for additional information about the Living Wage Law?*

The Maryland Department of Labor, Licensing, and Regulation is responsible for establishing the wage rates and ensuring compliance with the laws. General information on the Living Wage Law is available on the DLLR website: <http://www.dllr.state.md.us/> Charles Krebs, Administrative Officer of the Prevailing Wage Unit, may be reached at (410) 767-2342 or livingwage@dllr.state.md.us. Questions regarding the application of the Living Wage Law relating to a particular procurement should be directed to the procurement officer named in the solicitation. General procurement questions may be directed to the Board of Public Works at 410-260-7335 (local) or toll-free number 1-877-591-7320.