

Appendix 6. Living Wage Requirements for Services & Facilities Maintenance Contracts

The resulting Contract for this procurement has been determined to be a Tier 2 Contract.

I. The following Living Wage Requirements apply to the resulting Contract:

- A. Maryland law requires that contractors meeting certain conditions pay a living wage to covered employees on State service contracts over \$100,000. Maryland Code Ann., State Finance and Procurement Article, § 18-101 et al. The Commissioner of Labor and Industry at the Department of Labor requires that a contractor subject to the Living Wage law submit payroll records for covered employees and a signed statement indicating that it paid a living wage to covered employees; or file a request to the Commissioner of Labor and Industry for a waiver from Living Wage reporting requirements. See COMAR 21.11.10.05.
- B. If subject to the Living Wage law, Contractor agrees that it will abide by all Living Wage law requirements, including but not limited to reporting requirements in COMAR 21.11.10.05. Contractor understands that failure of Contractor to provide such documents is a material breach of the terms and conditions and may result in Contract termination, disqualification by the State from participating in State contracts, and other sanctions. Information pertaining to reporting obligations may be found by going to the Maryland Department of Labor website <http://www.dllr.state.md.us/labor/prev/livingwage.shtml>.
- C. Additional information regarding the State's living wage requirement is contained in **Attachment G. Bidders/Offerors must complete and submit the Maryland Living Wage Requirements Affidavit of Agreement (Attachment G) with their Bid/Proposal.** If the Bidder/Offeror fails to complete and submit the required documentation, the State may determine the Bidder/Offeror to not be responsible under State law.
- D. Contractors and subcontractors subject to the Living Wage Law shall pay each covered employee at least the minimum amount set by law for the applicable Tier area or the State or County minimum wage, whichever is higher. The applicable Living Wage rate is determined by whether a majority of services take place in a Tier 1 Area or Tier 2 Area of the State.
 - 1) The **Tier 1 Area** includes Montgomery, Prince George's, Howard, Anne Arundel and Baltimore Counties, and Baltimore City.
 - 2) The **Tier 2 Area** includes any county in the State not included in the Tier 1 Area.

(NOTE: State law requires that contractors and subcontractors pay at least the higher of the State or local minimum wage or the minimum Living wage rate whichever is higher.)

 - 3) (a) In the event that the employees who perform the services are not located in the State, the head of the unit responsible for a State Contract pursuant to §18-

102(d) of the State Finance and Procurement Article shall assign the tier based upon where the recipients of the services are located.

(b) If the Contractor provides more than 50% of the services from an out-of-State location, the head of the unit responsible for a State contract will determine the wage tier based on where the majority of the service recipients are located. See COMAR 21.11.10.07.

- E. The Contract will be determined to be a **Tier 1 Contract or a Tier 2 Contract** depending on the location(s) from which the Contractor provides 50% or more of the services. The Bidder/Offeror must identify in its Bid/Proposal the location(s) from which services will be provided, including the location(s) from which 50% or more of the Contract services will be provided.
 - 1. If the Contractor provides 50% or more of the services from a location(s) in a **Tier 1** jurisdiction(s), the Contract will be a **Tier 1 Contract**.
 - 2. If the Contractor provides 50% or more of the services from a location(s) in a **Tier 2** jurisdiction(s), the Contract will be a **Tier 2 Contract**.
- F. The Bidder/Offeror shall identify in the Bid/Proposal the location where services will be provided.
- G. **NOTE: The Living Wage may change annually, however, the Contract price will not change due to a change in the Living Wage rate or a change in the State minimum wage. The Contractor shall be responsible for any wage/rate increase during the term of the Contract and such increase may not be passed on to the State.**

See Attachment G. Maryland Living Wage Requirements Affidavit of Agreement to complete the Affidavit and submit with the Bid or Proposal.

II. Other Living Wage Requirements:

- A. This contract is subject to the Living Wage requirements under Md. Code Ann., State Finance and Procurement Article, Title 18, and the regulations proposed by the Commissioner of Labor and Industry (Commissioner). The Living Wage generally applies to a Contractor or subcontractor who performs work on a State contract for services that is valued at \$100,000 or more. An employee is subject to the Living Wage: if the employee spends at least one-half of the employee's time during any workweek on the contract for services; if he/she is at least 18 years old or will turn 18 during the duration of the contract; if the employee works at least 13 consecutive weeks on the State Contract and during that period works full time
- B. The Living Wage Law does not apply to:
 - (1) A contractor who:

- (a) Has a State contract for services valued at less than \$100,000, or
 - (b) Employs 10 or fewer employees and has a State contract for services valued at less than \$500,000.
- (2) A subcontractor who:
 - (a) Performs work on a State contract for services valued at less than \$100,000,
 - (b) Employs 10 or fewer employees and performs work on a State contract for services valued at less than \$500,000, or
 - (c) Performs work on a contract that is not covered by the Living Wage Law.
- (3) Service contracts for the following:
 - (a) Services with a public service company;
 - (b) Services with a nonprofit organization;
 - (c) Services between units in the Executive Branch of the State government; or
 - (d) Services between a unit and a County or Baltimore City.
- C. If the Unit responsible for the State contract for services determines that application of the Living Wage would conflict with any applicable Federal program, the Living Wage does not apply to the contract or program.
- D. A contractor is prohibited from splitting or subdividing a State contract for services, paying an employee through a third party, or treating an employee as an independent Contractor or assigning work to employees to avoid the imposition of any of the requirements of Md. Code Ann., State Finance and Procurement Article, Title 18.
- E. Each contractor/subcontractor, subject to the Living Wage Law, shall post in a prominent and easily accessible place at the work site(s) of covered employees a notice of the Living Wage Rates, employee rights under the law, and the name, address, and telephone number of the Commissioner.
- F. The Commissioner shall adjust the wage rates by the annual average increase or decrease, if any, in the Consumer Price Index for all urban consumers for the Washington/Baltimore metropolitan area, or any successor index, for the previous calendar year, not later than 90 days after the start of each fiscal year. The Commissioner shall publish any adjustments to the wage rates on the Division of Labor and Industry's website. A contractor or subcontractor subject to the Living Wage Law must comply with the rate requirements during the initial term of the contract and all subsequent renewal periods, including any increases in the wage rate, required by the Commissioner, automatically upon the effective date of the revised wage rate.
- G. A Contractor/subcontractor who reduces the wages paid to an employee based on the employer's share of the health insurance premium, as provided in Md. Code Ann., State Finance and Procurement Article, §18-103(c), shall not lower an employee's wage rate below the minimum wage as set in Md. Code Ann., Labor and Employment Article, §3413. A Contractor/subcontractor who reduces the wages paid to an employee based on

the employer's share of health insurance premium shall comply with any record reporting requirements established by the Commissioner of Labor and Industry.

- H. A Contractor/subcontractor may reduce the wage rates paid under Md. Code Ann., State Finance and Procurement Article, §18-103(a), by no more than 50 cents of the hourly cost of the employer's contribution to an employee's deferred compensation plan. A Contractor/subcontractor who reduces the wages paid to an employee based on the employer's contribution to an employee's deferred compensation plan shall not lower the employee's wage rate below the minimum wage as set in Md. Code Ann., Labor and Employment Article, §3-413.
- I. Under Md. Code Ann., State Finance and Procurement Article, Title 18, if the Commissioner determines that the contractor/subcontractor violated a provision of this title or regulations of the Commissioner, the contractor/subcontractor shall pay restitution to each affected employee, and the State may assess liquidated damages of \$20 per day for each employee paid less than the Living Wage.
- J. Information pertaining to reporting obligations may be found by going to the Division of Labor and Industry website <https://www.dlir.state.md.us/labor/prev/livingwage.shtml> and clicking on Living Wage for State Service Contracts.