


MEMORANDUM

March 4, 2014

TO: Government Operations and Fiscal Policy Committee

FROM: Robert H. Drummer, Senior Legislative Attorney 

SUBJECT: **Worksession:** Discussion – Enforcement of the County Wage Requirements Law

Expected Attendees:

David Dise, Department of General Services Director
Pam Jones, Procurement Manager, DGS
Grace Denno, DGS

Background

Bill 5-02, Procurement – Service Contracts – Wage Requirements, was enacted by the Council on June 11, 2002 and signed into law by the County Executive on June 20, 2002. This law, known as the Living Wage Law, is codified at §11B-33A of the County Code. The Living Wage Law requires certain businesses which provide services (but not goods) to the County to pay employees working on a County contract a minimum living wage that was originally set at \$10.50 per hour, effective July 1, 2003. The law requires the Chief Administrative Officer to adjust this rate each July 1 by the annual average increase, if any, in the Consumer Price Index for all urban consumers for the Washington-Baltimore metropolitan area. The current living wage is \$13.95 per hour. The Living Wage Law does not require employers to provide health insurance, but employers are given credit toward the wage rate for the cost of any health insurance provided.

Last year, Construction and General Laborers' Local Union 657, LIUNA, the union representing some of the workers for a County service contractor, Potomac Disposal, Inc., went on strike seeking an initial collective bargaining agreement with the company. The strike disrupted trash collection in the County. During the strike, DGS initiated an audit to investigate allegations that Potomac Disposal was not complying with the Wage Requirements Law. After the results of a preliminary audit, DGS decided to conduct a full audit of Potomac Disposal. On November 1, 2013, the company and the union settled the strike and entered into a collective bargaining agreement. The Wage Requirements Law, Code §11B-33A (f)(4), does not apply to any employee "for whom a lower wage rate is expressly set in a bona fide collective bargaining agreement." Therefore, employees of Potomac Disposal are no longer subject to the Wage Requirements Law for hours worked after November 1, 2013.

The Potomac Disposal strike raised questions on how the County was enforcing the Wage Requirements Law. The purpose of this worksession is to permit DGS to provide an overview of how the enforcement process works and answer questions from Committee members. Council staff submitted questions to DGS and received answers at ©1-4.

This packet contains:
Response to Council Questions

Circle #
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Response to Council questions on Living Wage

2-24-2014

1. How many contracts do we have that must comply with the Wage Requirements Law?

Typically, there are over 400 contracts under the Wage Requirements Law.

2. How do we determine which employees of the contractor and subcontractors work on the contract? Do we get regular payroll records? If so, does someone review them on a regular basis?

The contractor determines and files reports about covered workers performing direct and measurable work on the contract.

DGS/Office of Business Relations and Compliance (OBRC) reviews quarterly reports that are submitted. We have been receiving 50 to 200 reports quarterly.

3. What is our process for handling complaints? Do we require the contractor to provide its employees with a notice of the Wage Requirements law?

The contractor is required to post the wage requirements notices in a conspicuous place informing employees of the wage requirements. The name, address and phone number of the County designated employee are on the notices should a worker wish to file a complaint. When a complaint is received, the County designated employee gathers the information requested on the complaint form that is located on the County's intranet site, and submits it to the Living Wage Program Manager.

4. How many complaints did we receive each year over the last 3 years? What was the result of each complaint?

Twelve complaints have been received since the implementation of the Law in 2003. We did seven investigations and five audits. Details follow:

LIVING WAGE INVESTIGATIONS

Professional Hispanic Contractors (PHC) – On October 10, 2007 the County requested payroll records from PHC. A review of these records showed some minor noncompliance with the County's Living Wage Law. Consequently, additional records were requested. Again, some minor deficiencies were discovered. On December 14, 2007 PHC retroactively paid the amount of \$221.25 to its employees.

Potomac Disposal, Inc. – On July 25, 2007, the County received information that Potomac was not paying the Living Wage hourly rate. The County requested payroll records on August 6, 2007. The County received some records on August 22, 2007 but the records were insufficient to determine if the proper Living Wage rate was being paid to the employees. On January 15, 2008, the County received adequate records to show compliance with the Living Wage Law. The County notified Potomac on February 4, 2008 that they were in compliance.

Tito Contractors, Inc. – On October 10 2007 the County requested payroll records from Tito in order to determine if Tito was in compliance with the County's Living Wage Law. In the course of the investigation the County discovered that a Tito subcontractor kept virtually no payroll records. In addition Tito's records were lacking in many aspects. On January 25, 2008, the County issued a "Notice of Termination for Default" letter to Tito. Subsequently, the County cited for violations of the County Code. On November 25, 2008, the District Court of Maryland entered an Order of Abatement. Also, Tito issued retroactively checks totaling \$48,720.55.

Camco, LLC – On November 17, 2007, DHCA contacted DGS/OBRC concerning Camco after a conversation with the President of Camco. On December 1, 2007, the County sent a request for payroll records to Camco. The County received some records on January 10, 2010 but in no way did they demonstrate compliance and Camco refused to send additional records to show compliance. Consequently, on February 5, the County issued a "Notice to Cure Prior to Termination for Cause" letter. The contract was terminated on February 19, 2010.

Allied Barton Security Services – In a letter to the Assistant Account Manager, 24 employees inquired when they could expect the increase due from the July 1, 2012 Living Wage rate adjustment. The County sent a letter to the District Manager with the same question. The company corrected the hourly rate and issued retro checks on December 12, 2012.

Ecology – As a result of Potomac Disposal's strike, the County conducted a payroll investigations on Ecology Services. They were found in compliance with the Living Wage.

Unity – As a result of Potomac Disposal's strike, the County conducted a payroll investigations on Unity. The investigation is ongoing.

LIVING WAGE AUDITS

Cruz Cleaning Services, Inc. – A local attorney wrote a letter dated November 16, 2004 to a council member accusing Cruz of violating the Living Wage Law based on his own investigations. The audit report of May 24, 2005, found Cruz to be in violation of the Living Wage Law. The County sent Cruz a “Notice to Cure Prior to Termination for Cause” letter on April 6, 2005, with a termination date of April 20, 2005, should Cruz not cure. Cruz failed to cure and the contract was terminated on April 20, 2005. Audit cost was approximately \$40,000.

Crissol Contractors, Inc. – A local attorney wrote a letter dated November 16, 2004 to a council member accusing Crissol of violating the Living Wage Law based on his own investigations. The audit report of June, 2006 found Crissol to be in violation of the Living Wage Law. The County sent Crissol a “Notice to Cure Prior to Termination for Cause” letter on June 26, 2006, with a termination date of July 16, 2006. The contract was terminated on July 16, 2006. Crissol submitted falsified documents on July 17, 2006 to attempt to cure. The County kept the termination decision. Audit cost was approximately \$30,000.

JRP Management Resources, Inc. – The County’s Parking Management Division emailed DGS/OBRC with concerns about the veracity of an Invoice from JRP. An Entrance Conference was held with the outside auditors on February 27, 2009. The audit revealed that JRP was in violation of the County’s Living Wage Law. The audit also showed that JRP made cash payments to employees and did not report them to the IRS and that JRP, in some cases, failed to pay its employees for overtime worked. The County issued a “Notice to Cure Prior to Termination for Cause” letter on April 1, 2010, with a termination date of May 1, 2010. It should be noted that as a result of the audit, JRP issued retroactive checks to its employees totaling \$22, 053.24. Cost of the audit was \$40,320.

Camco, LLC – In mid-July of 2012, DGS/OBRC received 14 calls from Camco employees complaining that they were not receiving the proper hourly rate under the County’s Living Wage Law. Outside auditors were engaged on September 4, 2012. The audit showed that Camco was not in compliance with the County’s Living Wage Law. Currently OCA has this case under review. Cost of the audit was \$29,760 (for 26 employees)

Potomac Disposal, Inc – In Oct, 2013, Potomac Disposal workers went on strike. Among the complaints, some employees claimed that they are not paid the Living Wage. The County conducted a payroll investigation and found 22 violations in 390 payroll records examined. As a result, a formal wage audit is underway. Total audit cost is \$50,750 (for 33 employees, which is half of the workforce)

5. What are the sanctions if we find a violation? How do we ensure that all employees found to be underpaid are made whole?

The County can assess liquidated damages or terminate the contract. However, this is not the best method to ensure that the underpaid employees are justly compensated. When an issue arises, the Living Wage Program Manager attempts to negotiate a settlement with the vendor to ensure the employees are properly compensated including back pay.

DGS is proposing additional enforcement measures as discussed in item 7 below to address this issue.

6. How many employees are charged with investigating complaints and insuring compliance? Has this number changed over the last 5 years? If so, how?

1/3 FTE is dedicated to manage the Living Wage program. The same staff also manages the County's Prevailing Wage Law (2/3 FTE), which was implemented in 2009, reducing 1 FTE to 1/3 FTE on the Living Wage program.

7. Do you have any suggestions for changes to the law to help enforcement?

Implementing penalties for late payroll submission and other forms of enforcement may help motivate contractors to comply. The Prevailing Wage Law serves as a good model to ensure that workers are justly compensated for their efforts. The Living Wage Law should give the Director the ability to assess penalties for non-compliances, such as late payroll submissions and under-payments.

A comprehensive Procurement regulation updates through the CE is forth-coming, it will be submitted to the Council in early Spring.