

REGULATIONS OF THE DEPARTMENT OF PROCUREMENT SERVICES FOR MINIMUM BASE WAGES FOR CONTRACTS AND CONCESSION AGREEMENTS

1. GENERAL PROVISIONS

1.1. Statement of Authority

These regulations are issued pursuant to Executive Order No. 2014-1 (“Order”). The Order establishes contractual requirements setting minimum base wages in all Contracts advertised on or after October 1, 2014. Subsection 2.d. of the Order authorizes the chief procurement officer (“CPO”) to “promulgate rules and regulations to implement” the Order.

1.2. Statement of Purpose

These regulations describe the complaint and investigation procedures, the requirement that all contractors cooperate with such procedures, and the right of the chief procurement officer to request any information and business records to determine and ensure compliance with the Order.

2. DEFINITIONS

2.1. Definitions under these Regulations

Unless otherwise specified, whenever used in these regulations, the following terms have the following meanings:

“Contract” means “Concession Agreement” and “Contract,” as those terms are defined in the Order.

“Contractor” means “City Contractor” and “City Concessionaire,” as those terms are defined in the Order.

“Employee” has the meaning ascribed to that term in the Order.

2.2. Definitions under the Order and these Regulations

A person “perform[s] work under a Contract,” as that phrase is used in the Order under the definition of “Employee” in section 1.e. therein, when: (i) he or she works at a location that is either on City property or at the jobsite of a City project; (ii) the City pays an hourly rate for his or her work; (iii) the City pays a per piece rate for his or her work; or (iv) his or her work is provided to comply with a specified worker type and/or quantity provided for in the Contract. A person who makes or assembles goods to be provided to the City does not perform work under a Contract.

3. APPLICATION

3.1. Contracts Awarded through the Department of Procurement Services (DPS)

- 3.1.1. The Order applies to any contract awarded through DPS pursuant to chapter 2-92 of the Municipal Code of Chicago (MCC), advertised on or after October 1, 2014. The Order also applies to all sole source procurements approved by the Non-Competitive Review Board on or after October 1, 2014, and to all City Contracts, as that term is defined in section 2-92-649 of the Municipal Code of Chicago, executed on or after October 1, 2014. Employers must pay the specified minimum wage to those employees who are considered to be providing work to the City under the contract. It will apply primarily to contracts for services to the City, though some employees on contracts for supply may be covered. The Order also applies to subcontractors.
- 3.1.2. Under the order, the following are to be paid at least \$13 (as indexed to inflation) per hour:
 - a. Any employee regularly working on City property or at a City jobsite, whether directly employed by the contractor or employed by a subcontractor of any tier. Example: The Order covers a security guard or landscaping worker at a City jobsite.
 - b. On a contract for services, whether the contract pricing is based on hours worked, tasks performed, or a fixed overall price, where a certain number of workers are to be provided, those employees regularly performing that work. Examples: On a contract to provide telephone-based translation services or helpdesk services, the Order covers a translator or helpdesk phone operator. On a contract to provide data entry services, the Order covers a clerical worker performing data entry of City data. On a contract for offsite repair of City equipment, the Order covers the repair technician performing work on City equipment.
 - c. On a contract for the provision of supplies, when the contract requires for its performance an account representative directly in support of the service of supply of the required goods to the City, the Order covers those employees regularly performing that work.
- 3.1.3. However, the Order does not apply to employees whose work is in support of employer's general operation or which would ordinarily be considered overhead. Examples: An employee preparing invoices for the employer's goods or services, or an employee manufacturing a product to become employer inventory to be sold to the City, are not covered by the Order.

3.2. Concession Agreements

- 3.2.1. The Order applies to any concession opportunity advertised on or after October 1, 2014; employers must pay the specified minimum wage to those employees who are considered to be providing work in connection with the concession. The Order also applies to subcontractors, subtenants, and sublicensees.

- 3.2.2. Under the Order, any employee regularly working on City property or at the leased or licensed concession location must be paid at least \$13 (as indexed to inflation) per hour.
- 3.2.3. In the case of tipped employees, the Order increases the minimum cash wage by \$1 to \$5.95 and if, with tips and gratuities the employee's hourly wage does not reach \$13 per hour, the employer is required to make up the difference.
- 3.2.4. Similar to the way the Order applies to procurement contracts, the Order does not apply to employees whose work is in support of employer's general operation or which would ordinarily be considered overhead. Example: If the concession is a franchise, employees of the franchisor are not subject to the Order.

3.3. Base Wage and Prevailing Wage

If the payment of a Base Wage pursuant to MCC Sect. 2-92-610 is required for work or services done under this Contract, and the minimum wage, as determined pursuant to the Order ("Minimum Wage"), is higher than the Base Wage, then the Contractor must pay the Minimum Wage. Likewise, if the payment of a prevailing wage is required and the prevailing wage is higher than the Minimum Wage, then the Contractor must pay the prevailing wage.

4. PROCEDURES

4.1. Investigations

- 4.1.1. Pursuant to subsection 2.e. of the Order, if the CPO has reason to believe that any Employee has been paid less than the wage required under the Order, or upon receipt of a written verified complaint from such Employee, the CPO is authorized to conduct an investigation to determine whether the Order has been violated.
- 4.1.2. Such investigation may include requests for information and documents ("Requests for Information," or "RFIs") from Contractors, Employees, and other persons or entities reasonably believed to have the requested information or documents (hereinafter referred to collectively as "Knowledgeable Persons").
- 4.1.3. Knowledgeable Persons shall have 10 business days in which to respond to an RFI, which time limit may be extended at the CPO's discretion.
- 4.1.4. If the CPO determines that the Order has been violated, the default provisions of the applicable Contract will dictate the subsequent actions to be taken.

4.2. Complaints

- 4.2.1. An Employee's written, verified complaint alleging a violation of the Order must include the following information, unless otherwise specified:
 - a. Employee's name, address, phone number
 - b. Employee's email address (optional)
 - c. Employer's name, address, and phone number

- d. Supervisor's name
 - e. Employee's title
 - f. Location of the work performed by the Employee
 - g. Description of the work performed by the Employee
 - h. If known, the P.O., Specification number, and/or description of the Contract under which the Employee performed work
 - i. Start and end dates of employment with employer
 - j. Start and end dates of work on the Contract by the Employee
 - k. Hourly wage paid to the Employee while working on the Contract
 - l. Documentation of the hourly wage paid to the Employee while working on the Contract
 - m. A statement by the Employee affirming under penalties of perjury that the information provided in the Complaint is true and correct, e.g., "I do solemnly declare and affirm under penalties of perjury that the contents of the foregoing document are true and correct," followed by the Employee's printed name, signature, and the date.
- 4.2.2. An Employee's written, verified complaint must be signed by the employee, dated, and notarized.
- 4.2.3. All complaints must be submitted within one year of the first date of the alleged violation.
- 4.2.4. The CPO reserves the right to investigate any alleged or suspected violation at any time.

4.3. Audits

The CPO, in her discretion, may periodically audit any Contractor to verify compliance with the Order.

4.4. Cooperation and False Statements

- 4.4.1. Failure to cooperate in any investigation or audit conducted pursuant to the Order and these regulations shall be grounds for:
- a. In the case of a bid or proposal that may be in violation of the Order, rejection of such bid or proposal; and
 - b. In the case of a Contract that may have been negotiated, entered into, or performed in violation of the Order, termination of the Contract.
- 4.4.2. Any person who provides any information or documents to the City is subject to the City's False Statements ordinance, codified at Chapter 1-21 of the Municipal Code of Chicago.

5. FINAL DECISION

The CPO or designee shall make the final determination regarding compliance with the Order.