

Executive Order Steps Up Prevailing Wage Requirements for Contractors

Executive Order No. 73 was signed into law by Mayor Michael R. Bloomberg late last year to strengthen the enforcement of the prevailing wage requirements of New York's Labor Law.

New York, as well as just about all of the individual states, and the United States Department of Labor, requires all workers on public projects to be paid the prevailing wage for the particular job and to receive the appropriate benefits. The prevailing wages and benefits are set forth in the wage schedule for each job. The States and the Federal Government do not want contractors to "save" money on public works by not paying their workers the required wage and benefit – either intentionally or inadvertently.

Mayor Bloomberg's Executive Order No. 73 sets forth thirteen directives for the Director of the Mayor's Office of Contract Services ("MOCS") to insure that New York City agencies give all workers on New York City projects the required wages and benefits. The following list comes directly from Executive Order No. 73 and demonstrates the reach of MOCS:

- (a) if the apparent low bidder is lower than the bid of the next lowest bidder by more than 10% or \$300,000, MOCS will require that bidder to provide proof that the workers will be paid the prevailing wages and benefits and will require that this low bidder is requiring its subcontractors to do the same;
- (b) New York City agencies will submit all bid awards covered by (a) for MOCS review;

- (c) MOCS will review New York City agencies' compliance with (a);
- (d) New York City agencies will include in their bid packets requirements that contractors enter into written subcontractor agreements which include provisions covering the compliance with prevailing wage and benefit rules;
- (e) New York City agencies will require that contractors pay the costs of enforcing these requirements;
- (f) New York City agencies will develop a training program for prevailing wage investigators;
- (g) New York City agencies will require standard sign-in and sign-out logs or equivalent systems;
- (h) New York City contractors will be required to pay workers by check and if the general contract is over \$1,000,000 and the subcontract is over \$750,000 they must use a payroll service and check stubs must reflect the information required by the Labor Law;
- (i) New York City agencies must cooperate promptly with the Comptroller's Office in any investigation;
- (j) New York City agencies must include standard contract language reflecting this Order's requirements;
- (k) MOCS shall assist agencies with investigation and audit services to achieve prevailing wage compliance;

- (l) MOCS shall look into technological tools – on-line certified payroll submissions, bar-coded worker ID badges – to achieve prevailing wage compliance; and
- (m) MOCS, together with the Department of Investigation monitor agency compliance with this Order.

There can be no doubt that these provisions of Executive Order No. 73 will fulfill the purpose of strengthening "the enforcement of the prevailing wage requirements of the Labor Law." But even before this strengthening of the enforcement of the prevailing wage requirements, New York Labor Law provided significant civil (withholding, debarment, and monetary penalties) and criminal provisions to insure that contractors and subcontractors properly paid their workers. In fact those contractors and subcontractors who have tried to "save" by not meeting their prevailing wage obligations have either paid a heavy price – with penalties and interest over and above the moneys owed – or have in fact lost their businesses because of debarment.

The increased scrutiny that will result from Executive Order No. 73 therefore should have the effect of helping all the participants in public work – the taxpayers, the owners, the contractors, the subcontractors and the workers achieve their goals.

Janet M. Connolly, a partner with Goldberg & Connolly, assisted with preparation of this article.