



Legislation Text

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City of Alexandria, Virginia

MEMORANDUM

DATE: NOVEMBER 2, 2022

TO: THE HONORABLE MAYOR AND MEMBERS OF CITY COUNCIL

THROUGH: JAMES F. PARAJON, CITY MANAGER /s/

FROM: KENDEL TAYLOR, INTERIM DEPUTY CITY MANAGER

DOCKET TITLE

Introduction and First Reading. Consideration. Passage on First Reading of an ordinance to amend and reordain Article D (Contract Formation and Method Of Source Selection), Division 1 (Competitive Sealed Bidding) to add Section 3-3-31.2 (Payment of Prevailing Wage for work performance on construction contracts) and Division 2 (Competitive Negotiations) to amend Section 3-3-63.1 (Service Contract Wages) both of Chapter 3 (Purchases and Contractual Services) of Title 3 (Finance, Taxation and Procurement), of the Code of the City of Alexandria, Virginia, 1981, as amended, to establish Prevailing Wage provisions for public construction contracts.

ISSUE: The City is proposing to add prevailing wage provisions to the Alexandria City Code for construction contracts larger than \$250,000, solicited on or after July 1, 2023. Prevailing wage rates will be determined by the Virginia Commissioner of Labor and Industry on the basis of applicable prevailing wage rate determinations made by the U.S. Secretary of Labor under the provisions of the Davis-Bacon Act.

RECOMMENDATION: That City Council pass on first reading this proposed ordinance and schedule it for second reading, public hearing and final passage on Saturday, November 12, 2022 and thereafter adopt the attached Ordinance approving amendments to the Alexandria City Code to establish prevailing wage provisions.

DISCUSSION: The Virginia General Assembly in its 2020 legislative session amended the Virginia Public Procurement Act (VPPA) to provide localities the option to implement prevailing wage provisions for “public works” contracts larger than \$250,000. If adopted by the locality, all contractors and subcontractors would be required to pay prevailing wages for work performed on such contracts.

The VPPA defines the “prevailing wage rate” as:

“the rate, amount, or level of wages, salaries, benefits, and other remuneration prevailing for the corresponding classes of mechanics, laborers, or workers employed for the same work in the same trade or occupation in the locality in which the public facility or immovable property that is the subject of the public works is located” (VPPA, §2.2-4321.3).

In practical terms, prevailing wage rates reflect the average wages paid and benefits provided for particular labor classifications within a local area.

The applicability of prevailing wage provisions hinges also on the meaning of “public works,” which the VPPA defines as follows:

“the operation, erection, construction, alteration, improvement, maintenance, or repair of any public facility or immovable property owned, used, or leased by a state agency or locality, including transportation infrastructure projects” (VPPA, §2.2-4321.3).

The Virginia Department of Labor and Industry (DOLI), following the legislation, is basing its implementation on the federal Davis-Bacon Act, which has long required the payment of prevailing wages on federally-funded construction projects. DOLI is relying upon the Davis-Bacon program for eligibility definitions and wage determinations, which effectively limits the applicable pool of contracts to construction projects only. Virginia localities, including the City, have some flexibility in designing their programs, however there is a considerable benefit to following the Commonwealth’s approach in limiting the scope of the prevailing wage requirement to construction contracts only to ensure consistency and availability of wage rates.

The City Code defines “construction” as follows:

“Building, altering, repairing, improving, or demolishing any structure, building or highway, and any draining, dredging, excavation, grading or similar work upon real property” (Sec. 3-3-6).

Narrowing the scope of prevailing wage requirements to construction contracts would exclude operations and maintenance contracts and is consistent with the adopted prevailing wage provisions in Arlington and Fairfax County.

Policy Impacts

Following the General Assembly’s action to amend the VPPA, City staff have consulted with neighboring jurisdictions and DOLI staff, researched prevailing wage policies implemented across the nation, and engaged a consultant to study the impacts of a prevailing wage policy on the City. The Arlington County Board of Supervisors adopted a prevailing wage ordinance applicable to construction contracts greater than \$250,000 in July 2021, which staff have reviewed in conversation with County staff. Fairfax County also adopted a prevailing wage policy in January similar to the Arlington County ordinance (\$250,000 and above), effective for contracts awarded after July 1, 2022.

Prevailing wage policies are not new in the Metropolitan Washington, D.C. area, as they have been in place in Washington, D.C. and Maryland for many years. Until May 2021 when the VPPA amendments took effect, they have been required in Virginia only on federally-funded construction projects. The goal of a prevailing wage policy is to leverage the market impact of public contracts to increase or at least maintain average wage and benefit rates for construction laborers and tradespeople in a locality. Benefits often cited of such a policy include not only improved wages and benefits for employees, but also better workforce training, a more

educated and experienced workforce, lower injury rates, and higher quality work which theoretically can reduce change orders and re-work, thereby lowering construction costs.

Recommended City Prevailing Wage Policy

The effectiveness of a City prevailing wage program will depend in no small part on clarity of policy requirements, consistency with other jurisdictions, and the degree to which the City is able to assist the business community in reaching compliance. With these goals in mind, staff recommend a prevailing wage policy as follows.

1. **Policy Scope:** Given that wage determinations are available from the Virginia Department of Labor and Industry for construction labor classifications only, based upon the Davis-Bacon Act, staff recommend limiting the applicable scope of a prevailing wage policy to construction projects, excluding operations and maintenance contracts. This will eliminate the potential situation in which wage determinations are not available to staff and mitigate procurement delays as a result of this policy.
2. **Dollar Threshold:** Consistent with Fairfax and Arlington County's adopted policy, staff recommend a contract value threshold of \$250,000. The City shares a labor market and contractor community with its immediate neighbors, and adopting varying prevailing wage thresholds will place a greater compliance burden on firms while at the same time limiting the regional impact of the various policies on wages earned by construction laborers and tradespeople.
3. **City Program Administration:** Adoption of a prevailing wage policy represents a significant change for our contractor community, especially for small firms and SWaM businesses. However, since both Arlington and Fairfax County have prevailing wage policies, the change should be minimal at this point. Staff recommend a passive approach to monitoring firms and guiding contractors into compliance. Passive approaches may or may not require periodic self-reporting by the contractors, but their primary mechanism for identifying non-compliance is through employee complaints. As long as employees understand their rights this can be an effective means of control. Other entities opt for more active compliance monitoring using tactics such as regular review of payroll reports and employee interviews to validate the information in those payroll reports. Both passive and active approaches rely on accurate signage posted at construction sites to help ensure workers are aware of their rights. Finding the right balance on the compliance continuum is important to ensure workers are being treated fairly while also working to minimize unnecessary administrative burden on both the City and its contractors. Regardless of the City's specific compliance practices, employees are always able to report wage complaints to the Department of Labor and Industry which then engages in a review process. If it is determined that the contractor failed to pay prevailing wage, they will be liable to the individual employee, or employees, for the applicable wages and interest, and shall be disqualified from bidding on any public contract until the contractor has made full restitution.
4. **Implementation Plan and Timeline:** Should City Council adopt the recommended prevailing wage ordinance, the anticipated implementation approach is as follows:
 - November 2022
 - Adoption of Prevailing Wage Ordinance
 - December 2022
 - Development of Prevailing Wage Program and Outreach Program
 - January - June 2023

- Outreach Program begins
- January - June 2023
 - Implement software to facilitate payroll data reporting, as needed
- February - May 2023
 - Proposed FY 2024 to FY 2033 CIP, inclusive of Prevailing Wage Cost Impacts and any potential project reprioritization to accommodate Prevailing Wage Costs for FY 2024 and onwards
 - Adoption of FY 2024 to FY 2033 CIP
- July 2023
 - Prevailing Wage Ordinance effective for all projects initiated after July 1, 2023

Existing standard contract and solicitation templates will need to be modified and the City's online purchasing pages and portals updated. Most importantly, staff will need to design and execute a significant contractor outreach and education effort. With this pathway in mind, staff recommend an effective date of July 1, 2023, for newly advertised construction solicitations.

Program Evaluation

A prevailing wage program is new for contractors, the City, and the Commonwealth. As such, staff expect to conduct regular evaluations of the impact and effectiveness of the program. This would include information concerning the impact on wages paid to impacted labor classes, with a demographic analysis, the impact on project costs, levels of contractor compliance, and the impact on competition as reflected in participation in construction solicitations.

Staff anticipate further adjustments to the policy and program administration approach as actual impacts become known.

FISCAL IMPACT: In preparing a policy recommendation for Council to review, staff analyzed construction contracts awarded during the last three fiscal years (FY 2019 to FY 2021). The City's consultant, Faithful+Gould, assessed that cost increases for contracts above \$500,000 would be relatively low (0% to 5%) because large contracting firms in the Washington, D.C. market likely already pay prevailing wages due to their body of work which includes federal, Washington, D.C., and Maryland contracts, as noted above. These firms already have the expertise and business systems to manage compliance and the advantage of spreading related costs across multiple large projects. They further assessed that contracts below \$500,000 (but over \$250,000) are likely to increase by the full local differential between open shop and prevailing wages, which is approximately \$5 per hour or 20%.

Over the last three fiscal years, the City issued, on average, approximately 30 construction purchase orders in excess of \$250,000 per year (roughly 5 percent of annual purchase orders). However, these purchase orders represent just over 54 percent of the total dollar value issued each year. Taking into account the two tiers mentioned above, staff estimate the weighted increase in cost for affected projects will be approximately 8 percent.

Looking ahead over the ten-year capital planning period, the total cost increase is estimated at \$115.0 million on a total FY 2022 to FY 2031 CIP of \$2.66 billion (4.3%). Staff are collaborating to ensure prevailing wage rates are considered in the current FY 2024 to FY 2033 CIP development process. The labor market is considerably volatile at this time, and the true impact of the Prevailing Wage Ordinance will be difficult to determine.

No additional funding or personnel was included in the FY 2023 Approved Operating Budget. Existing staff will rely on the passive monitoring approach, and also rely on an online portal similar to that used by Arlington County to conduct payroll data reporting as requested on a random audit basis.

ATTACHMENTS:

Attachment 1: Ordinance Cover

Attachment 2: Ordinance to Adopt Changes to the Alexandria City Code to Establish Prevailing Wage Provisions

STAFF:

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