

Office of the County Auditor
Auditor's Analysis

Council Bill No. 76-2021

Introduced: October 4, 2021

Auditor: Owen Clark

Fiscal Impact:

Our Office does not anticipate any fiscal impact to result from this legislation.

Per inquiry from our Office, the Administrator of the Office of Procurement and Contract Administration (the Administrator) does not anticipate additional expenditures being incurred if sole sources are added to the County's Living Wage program. Vendors self-register for this program and documentation is maintained by the Office of Procurement and Contract Administration.

Purpose:

The purpose of this legislation is to remove the exception that allows sole source contracts to be excluded from certain wage requirements.

Other Comments:

For historical context, the Administrator noted there have been 46 sole source contracts, each exceeding \$100,000, that were approved by the County's Contract Review Committee (CRC) in the past three years. Of these:

- Thirty, totaling \$9.7 million, were contracts for services to be provided over a period of time, and
- Sixteen, totaling \$4.5 million, were purchase orders for a one-time purchase of goods or services.

Please see **Attachment A** for an overview of the Living Wage requirement.

The Administrator anticipates this legislation would be applied prospectively to new sole source contracts after this legislation is enacted, as opposed to retroactively to all existing and new contracts. The Office of Law has also indicated that it reads this legislation as being applied prospectively.

Information on Howard County, Maryland's Living Wage Requirement

Basics of the Howard County Living Wage Legislation

In 2007, the Howard County Council passed legislation requiring a minimum "living wage" for employees of certain contractors and subcontractors of Howard County. A Contractor that is defined as a "Covered Employer" under Howard County Code Section 4.122A shall pay each employee an hourly rate sufficient to at least equal 125% of the federal poverty guidelines for a family of four individuals calculated on the basis of a 40-hour work week for 52 weeks.

Howard County Code Sec. 4.122A applies to service contracts estimated to be over \$100,000.00 per year. The code does not apply to commodities contracts, contractors who employ fewer than 5 employees during the contract term, public entities, non-profit organizations, or contracts awarded under sole source, emergency, or expedited procedures. Other contractors may also be exempt; see the complete list of exemptions in Section 1 on the front of this form.

The living wage requirements do not apply to an employee:

- who performs no measurable work related to any contract with the County
- who participates in a government-operated or government-sponsored program that restricts the earnings of or wages paid to employees to a level below the wage required under the law
- who participates for not longer than 120 days in a calendar year in a government-operated or government-sponsored summer youth employment program
- for whom a different wage rate is expressly set in a collective bargaining agreement, or
- for whom a higher wage is required by a federal, state, or County law.

This form serves as written certification to the County of your firm's intent to comply with the County's wage requirements during this term and any subsequent renewals. A Covered Employer shall not subdivide a contract; pay an employee through a third party; or treat an employee as a subcontractor or independent Contractor to avoid the imposition of any requirement under this law. Failure to comply with this requirement at any time during the initial term and subsequent renewals may be sufficient cause for termination for default. A violation of this law is a Class A civil offense; in addition to a fine, the County may suspend or debar the violator under Howard County Code Sec. 4.117.

Current Living Wage Rate in Howard County

As of January 13, 2021, the Living Wage Rate is **\$15.93 per hour**.

How the Living Wage Rate is Calculated

The Howard County Living Wage Rate is calculated by taking 125% of the Federal Poverty Guideline for a family of 4, then using this amount to determine the hourly rate based on 40 hours/week. On January 13, 2021, the Federal HHS Poverty Guideline was published as \$26,500 for a family of 4 (see <https://aspe.hhs.gov/poverty-guidelines>).

$$125\% \text{ of } \$26,500 = \$33,125.00 \quad \$33,125.00 \div 52 \text{ weeks} \div 40 \text{ hrs./week} = \mathbf{\$15.93 \text{ per hour}}$$

This hourly rate must be paid to employees (full-time or part-time) during the time the employees actually provide services to the County. The current Living Wage remains in effect until new federal poverty guidelines are published, which is usually the following January. If there is a change, the Office of Purchasing will attempt to notify all current contractors via email using the email address provided on this form. The current rate is posted on our website at <https://www.howardcountymd.gov/Departments/County-Administration/Procurement-and-Contract-Administration>. It is the contractor's responsibility to ascertain the current rate.

Since the rate is subject to change annually, you must ensure that your bid pricing is sufficient to cover the cost of any increases during the term of the contract, including subsequent renewals. All prices shall take the current wage rate, and subsequent increases in the wage rate, if any, into account and there shall be no unit price adjustment for future wage rate increases during the initial term of this agreement and any subsequent renewals thereof. Future wage rate increases are hereby defined as any new rates approved by the County that take effect after and supersede the rate shown in this solicitation.

If you have questions about the Living Wage Requirement or how to complete this form, please contact the Office of Procurement and Contract Administration at purchasing@howardcountymd.gov or 410-313-6370.

**Howard County, Maryland Wage Rate Requirements for Service Contracts
Exemption Status Subtitle 1, Howard County Code Section 4.122A(b)(2)**

Prime Contr.	Sub-Contr.	Section 1: Exemptions	Check all that apply, then continue to Section 2. If none of these statements apply to your company or the Subcontractor, check the last box in this section and continue to Section 2.
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|--------------------------|--------------------------|---|
| <input type="checkbox"/> | <input type="checkbox"/> | Contractor or Subcontractor employs fewer than 5 employees at any time during the contract term. |
| <input type="checkbox"/> | <input type="checkbox"/> | Contractor or Subcontractor received less than \$100,000 from the County in the most recent 12-month period prior to the start date and will be entitled to receive less than \$100,000 from the County within the next 12-month period. |
| <input type="checkbox"/> | <input type="checkbox"/> | Contractor or Subcontractor is a nonprofit organization that has qualified for an exemption from federal income taxes under Section 501(c)(3) of the Internal Revenue Code. |
| <input type="checkbox"/> | <input type="checkbox"/> | Contractor or Subcontractor is expressly precluded from complying with Howard County Code Sec. 4.122A by the terms of any federal, state, or County law, federal or state contract or grant, and the contract falls within that preclusion. |
| <input type="checkbox"/> | <input type="checkbox"/> | Contractor or Subcontractor is a public entity. |
| <input type="checkbox"/> | <input type="checkbox"/> | Contractor or Subcontractor participates in a contract awarded under Howard County Code Secs. 4.110 (Sole Source), 4.111 (Emergency), or 4.112 (Expedited). |
| <input type="checkbox"/> | <input type="checkbox"/> | Contractor or Subcontractor is a regulated public utility. |
| <input type="checkbox"/> | <input type="checkbox"/> | Contract was awarded under a cooperative procurement with another government or organization of governments. |

Check here if none of the above statements are applicable to your company or the Subcontractor, then continue to Section 2.

Section 2: Certifications	<ul style="list-style-type: none"> If you checked any exemptions in Section 1, skip this section and continue to Section 3. If you did not check any exemptions in Section 1, check each box in Section 2 that applies to your company, then complete Section 3 below.
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I do hereby certify that I have read and understand the provisions of Section 4.122A of the Howard County Code, that I am an authorized representative of the Contractor named below, and that:

- As a "covered employer," the Contractor and all Subcontractors will comply with the County's Wage Rate Requirements for Service Contracts (Howard County Code Sec. 4.122A) and will pay all employees not exempt under the wage requirements, and who perform direct measurable work for the County, the applicable wage requirements at the time the work is performed. The Contractor will keep the records necessary to show compliance and will submit such records to the Purchasing Agent on request of the Purchasing Agent; and will publicize the requirements of this law to any employees who may be covered by the law. The Contractor's proposed pricing is sufficient to meet the current living wage rate requirements during the initial term of the agreement and any increases applicable to subsequent renewals.
- If health insurance is provided to employees**, the per employee hourly cost of the premium for health insurance to an employee who provides services to the County that appears in the bid or proposal is correct.

Section 3: Contact Information	Provide your contact information in the space below, then sign and date this form and submit it with your bid.
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Contractor Name _____	Vendor Federal ID Number _____
Address _____	Phone Number _____
_____	Email Address _____
Authorized Signature _____	Date _____
Print Name of Signatory _____	Title of Signatory _____

To be completed by the Buyer	Contract Title:		Buyer's Initials:
	Contract #:	Contract Term:	
	Capital Project No:	Renewal #:	