

DIVISION 3. TREATMENT OF EMPLOYEES ASSOCIATED WITH CITY CONTRACTS

Sec. 20-76. Payment of prevailing wages.

(a) Required. Every worker, mechanic or other laborer employed by any contractor or subcontractor in the work of drayage or of construction, alteration, improvement, repair, maintenance or demolition of any public building or public work by or in behalf of the city, or for any agency of the city, or financed in whole or in part by the city, or any agency of the city, or engaged in the work of a doorkeeper, caretaker, cleaner, window washer, porter, keeper, janitor, or in similar custodial or janitorial work in connection with the operation of any such public building or the prosecution of any such public work by or in behalf of the city, or for any agency of the city, or financed in whole or in part by the city, or any agency of the city, shall be paid not less than the wages prevailing for the same class and kind of work in the city as determined by the career service board under subsection (c).

(b) Contract specifications. The specifications for every contract in excess of two thousand dollars (\$2,000.00) to which the city or any of its agencies is a party which requires the performance of work involving drayage or involving construction, alteration, improvements, repairs, maintenance or demolition of any public building or public work, or which requires the performance of the work of a doorkeeper, caretaker, cleaner, window washer, porter, keeper, janitor, or similar custodial or janitorial work in connection with the operation of any such public building or the prosecution of any such public work, shall contain a provision stating that the minimum wages to be paid for every class of laborer, mechanic and worker shall be not less than the scale of wages from time to time determined to be the prevailing wages under subsection (c). Every contract based upon these specifications shall contain a stipulation that the contractor or subcontractor shall pay mechanics, laborers and workers employed directly upon the site of the work the full amounts accrued at time of payment, computed at wage rates not less than those stated or referenced in the specifications, and any addenda thereto, on the actual date of bid opening, or in effect on the date of grant of permit for performance of such work under D.R.M.C. section 49-171 et seq., or on the date of the written purchase order for contracts let by informal procedure under D.R.M.C. section 20-63(b), regardless of any contractual relationship which may be alleged to exist between the contractor or subcontractor and such laborers, mechanics and workers. Increases in prevailing wages subsequent to the date of the contract for a period not to exceed one (1) year shall not be mandatory on either the contractor or subcontractors. Future increases in prevailing wages on contracts whose period of performance exceeds one (1) year shall be mandatory for the contractor and subcontractors only on the yearly anniversary date of the contract. In no event shall any increases in prevailing wages over the amounts thereof as stated in such specifications result in any increased liability on the part of the city, and the possibility and risk of any such increase is assumed by all contractors entering into any such contract with the city. Decreases in prevailing wages subsequent to the date of the contract for a period not to exceed one (1) year shall not be permitted. Decreases in prevailing wages on contracts whose period of performance exceed one (1) year shall not be effective except on the yearly anniversary date of the contract.

(c) Determination of prevailing wages.

(1) The city council hereby declares that it is in the best interests of the city to have a uniform determination of the prevailing wages to be paid to the various classes of laborers, mechanics and workers which will be required in the performance of work covered by this section.

(2) The city council hereby finds and concludes that the federal government, in implementing the Davis-Bacon Act (40 U.S.C. §276a to 276a-5), possesses and exercises a superior capability with superior resources to ascertain the basic rate of pay, overtime, and other benefits which accurately represent the current prevailing rate of wages for work covered by that federal law. The career service board shall determine that the prevailing wages applicable to the various classes of laborers, mechanics, and workers covered by this section and the Davis-Bacon Act correspond to the prevailing wage determinations made pursuant to that federal law as the same may be amended from time to time. The board shall undertake to keep and maintain copies of prevailing wage determinations made pursuant to the Davis-Bacon Act (40 U.S.C. §276a to 276a-5) and any amendments to that federal law. The board shall also keep and maintain such other information as shall come to its attention concerning wages paid in the city. If the board has reason to believe that a prevailing wage determination made pursuant to that federal law is substantially different from wages paid in the city based upon other information, it shall so inform the city council for their consideration and action by ordinance. The provisions of this section shall supersede any differing provisions of that federal law, except when that federal law is applicable independent of this section.

(3) It shall be the duty of the career service board to determine, after hearing, the prevailing wages for the various classes of laborers, mechanics, and workers which will be required in the performance of work covered by this section but not be covered by the Davis-Bacon Act, which determinations shall be made periodically at least every six (6) months, and as frequently as may be considered necessary by the career service board in order that the determination which is currently in effect shall accurately represent the current prevailing rates of wages. Prior to making such determination, the career service board shall give reasonable public notice of the time and place of the hearing concerning such proposed determination and shall afford to all interested parties the right to appear before it and to present evidence. "Prevailing wages" shall mean, for each class of work covered by this section but not covered by the Davis-Bacon Act, the rate of pay and the overtime and other benefits granted to such full-time workers in the city. The rates shall be determined using the same method as used for those classes which are covered by the Davis-Bacon Act, except the following classifications of workers shall have their rate of pay and the overtime and other benefits based upon the rate of pay and the overtime and other benefits currently and most commonly paid to such full-time workers in the city:

Custodian I

Custodian II

Window Cleaners, Journeyman

Career service authority, upon receipt of information from any person interested in the above listed classifications, shall recommend to the mayor and city council a methodology for establishing prevailing rates for those classifications by January 15, 2000.

If there is insufficient data available in the city to determine the rate of pay and the overtime and other benefits or should comparable classes of work not be performed within the city for each class of work covered by this section and not covered by the Davis-Bacon Act, the career service board shall refer to the Service Contract Labor Act of 1965, as amended (41 U.S.C. §351 et seq.) to determine the rate of pay and the overtime and other benefits.

(d) Mandatory contract provisions; enforcement.

(1) Every contract covered by this section shall contain a provision requiring the contractor and every subcontractor under such contract to pay every worker, mechanic and laborer employed under such contract not less than the scale of wages as provided for under subsections (b) and (c).

(2) Such contract shall further require the contractor and subcontractors to pay all construction workers, mechanics and other laborers at least once a week the full amounts of wages accrued at the time of payment, computed at wage rates not less than those stated in the specifications; except that the contractor and subcontractors shall make such payments to non-construction workers such as janitorial or custodial workers at least twice per month.

(3) Every such contract shall further provide that the contractor shall post in a prominent and easily accessible place at the site of the work the scale of wages to be paid by the contractor and all subcontractors working under the contractor.

(4) The contract shall further provide that if the contractor or any subcontractor shall fail to pay such wages as are required by the contract, the auditor shall not approve any warrant or demand for payment to the contractor until the contractor furnishes the auditor evidence satisfactory to the auditor that such wages so required by the contract have been paid. Any contractor or subcontractor may utilize the following procedure in order to satisfy the requirements of this section:

a. The contractor or subcontractor may submit to the auditor, for each worker, mechanic or other laborer to whom such wages are due, a check, as required by the auditor. Such check shall be payable to that worker, mechanic or other laborer, or to the City and County of Denver so it is negotiable by either of those parties. Each such check shall be in an amount representing the difference between the accrued wages required to be paid to that worker, mechanic or other laborer by the contract and the wages actually paid by the contractor or subcontractor.

b. If any check submitted pursuant to paragraph (4)a. of this subsection cannot be delivered to the worker, mechanic or other laborer within a reasonable period of time as determined by the auditor, then it shall be negotiated by the city and the proceeds deposited in the auditor's unclaimed prevailing wages special trust fund. Nothing in this subsection shall be construed to lessen the responsibility of the contractor or subcontractor to attempt to locate and pay any worker, mechanic or other laborer to whom wages are due.

c. Any valid, verified claim for prevailing wages that is actually received by the city through negotiation of any check submitted pursuant to paragraph (4)a. of this subsection must be made prior to two (2) years after the date of the last underpayment by the contractor or any subcontractor to the worker, mechanic or other laborer to whom such wages were due. After such date, the city shall no longer be liable for payment. The city, as trustee, shall pay such claimant only the amount of the check that is actually negotiated, regardless of any dispute as to any additional amount of wages owing to the worker, mechanic or other laborer. No interest shall be paid by the city on any funds received or disbursed pursuant to this subsection.

d. On the last working day of each month, the amount of any claim for which the city is no longer liable shall be credited to the general fund, except as otherwise required by law.

e. The auditor shall maintain a list of all unclaimed, city-negotiated prevailing wage checks for which the city is liable. Such list shall be updated monthly and shall be available for inspection at the office of the auditor.

(5) Every such contract shall further provide that the contractor shall furnish to the auditor each week during which work is in progress under the contract a true and correct copy of the payroll records of all workers, laborers and mechanics employed under the contract, either by the contractor or subcontractors. Such payroll records shall include information showing the number of hours worked by each worker, laborer or mechanic employed under the contract, the hourly pay of such worker, laborer or mechanic, any deductions made from pay, and the net amount of pay received by each worker, laborer or mechanic for the period covered by the payroll.

(6) It shall further be provided in such contract that the copy of the payroll record shall be accompanied by a sworn statement of the contractor that the copy is a true and correct copy of the payroll records of all mechanics, laborers or other workers working under the contract, either for the contractor or subcontractors, that payments were made to the workers, laborers and mechanics as set forth in the payroll records, that no deductions were made other than those set forth in such records, and that all workers, mechanics and other laborers employed on work under the contract, either by the contractor or by any subcontractor, have been paid the prevailing wages as set forth in the contract specifications.

(7) Every such contract shall further provide that if any laborer, worker or mechanic employed by the contractor or any subcontractor under the contract has been or is being paid a rate of wages less than the rate of wages required by the contract to be paid as aforesaid, the city may, by written notice to the contractor, suspend or terminate the contractor's right to proceed with the work, or such part of the work as to which there has been a failure to pay the required wages, and in the event of termination, may prosecute the work to completion by contract or otherwise, and the contractor and any sureties shall be liable to the city for any excess costs occasioned the city thereby.

(Code 1950,§161.1A, 161.1B, 161.1C, 161.1D; Ord. No. 582-85,§2, 10-28-85; Ord. No. 212-89,§ 1, 4-17-89; Ord. No. 979-95,§1, 11-27-95; Ord. No. 546-96,§1, 7-1-96; Ord. No. 624-97,§1, 9-22-97)

Sec. 20-77. Reserved.

Editor's note--Former§20-77 pertained to affirmative action/equal employment opportunity, was repealed by§1 of Ord. No. 513-90, adopted Sept. 4, 1990, and originated from the 1950 Code,§ 161.1E. For current provisions pertaining to similar subject matter, see§28-31 et seq. and§28-91 et seq.

Sec. 20-78. Requirements before payment to contractors.

No warrant or demand for payment to any contractor under any such contract shall be drawn or allowed by the auditor unless such contractor shall have filed with the auditor the reports and statements required by section 20-76(d) nor while any such contractor or any subcontractor under the contractor shall be in default in the payment of such wages as are required by the contract.

(Code 1950,§161.1F)

Sec. 20-79. Division constitutes part of all contracts.

The provisions of this division shall constitute a part of every contract of employment between every contractor or subcontractor and any employees performing work covered by the provisions of this division.

(Code 1950,§161.1G)

Secs. 20-80--20-84. Reserved.