

CITY OF ROCHESTER
REVIEW OF ROCHESTER LIVING WAGE ORDINANCE

Distribution: Lovely A. Warren, Mayor
Dr. Cedric Alexander, Deputy Mayor
Charles Benincasa, Director of Finance
Timothy Curtin, Corporation Counsel

Office of Public Integrity
Date: May 23, 2018

I. EXECUTIVE SUMMARY

In this review, the Office of Public Integrity (OPI) examined compliance with Rochester Living Wage Ordinance No. 2001-36. The results of this review indicate that, in general, internal controls are adequate, and contractors are complying with the Living Wage Ordinance. We noted the following findings during this review:

- ◆ The City contact for an employee with a Living Wage complaint that is indicated in the City's Living Wage Procedures for Contract Administrators differs from the contact listed on the Notice to Employees of Living Wage document that employers are required to post in their workplace.
- ◆ OPI noted that all vendor request payments for payroll included documentation to support wages paid to employees and that the rate paid was in accordance with the Living Wage Ordinance without exception.

II. BACKGROUND, OBJECTIVES AND SCOPE

A. Assignment

The Office of Public Integrity routinely reviews contract compliance of contractors who conduct business with the City of Rochester.

B. Background

City Council adopted the Rochester Living Wage Ordinance in January 2001. The purpose of this Ordinance is to ensure that employees of substantial City contractors and subcontractors earn an hourly wage that is sufficient for a family to live at or above the poverty guideline. This Ordinance applies to professional service agreements of \$50,000 and over but excludes:

- 1) Persons who are employed in construction work covered pursuant to federal or state prevailing wage laws.
- 2) Welfare-to-work, youth employment programs and job training programs, and workers with disabilities, full-time students, messengers, learners, student-learners and apprentices for whom the covered employer has received a certificate to pay special minimum wages pursuant to Section 14 of the Federal Fair Labor Standards Act.

Additionally, this Ordinance does not include any contracts awarded through the competitive bidding process pursuant to the General

Municipal Law Section 103.

The per hour living wage rate for fiscal year 2018 was \$11.85 for employees if their employer offered health benefits and \$13.23 for employees not offered health benefits. In fiscal year 2017, the per hour living wage rate was \$11.65 for employees if their employer offered health benefits and \$13.01 for employees not offered health benefits. The Ordinance requires that the City adjust the living wage rate annually based on the change in the Consumer Price Index. The following table summarizes the living wage rate for the last 4 fiscal years.

<u>Living Wage Hourly Rate</u> <u>For July 2014 to June 2018</u>		
<u>Fiscal Year</u>	<u>With Health Insurance</u>	<u>With Out Health Insurance</u>
July 2014 – June 2015	\$11.47	\$12.81
July 2015 – June 2016	\$11.59	\$12.94
July 2016 – June 2017	\$11.65	\$13.01
July 2017 – June 2018	\$11.85	\$13.23

C. Objective and Scope

The objectives of this review were to evaluate contract compliance with the Rochester Living Wage Ordinance No. 2001-36. The scope included all professional service agreements from January 1, 2017 to December 31, 2017 and corresponding records applicable to all wage related expenses that contractors submitted to the City for reimbursement for this period.

OPI noted 877 professional service agreements for this period. The following table details the breakdown of these agreements.

<u>Professional Service Agreements</u> <u>January 1, 2017 to December 31, 2017</u>	
All professional service agreements	877
Less: PSAs less than \$50,000	724
Less: PSAs of at least \$50,000 but exempt	<u>99</u>
PSAs subject to Living Wage requirements	54

Management is responsible for establishing and maintaining a system of internal accounting and administrative control. Fulfilling this responsibility

requires estimates and judgments by management to assess the expected benefits and related costs of control procedures. The objectives of a system are to provide management with reasonable, but not absolute, assurance that assets are safeguarded against loss from unauthorized use or disposition, and that transactions are executed in accordance with management's authorization and recorded properly to permit the preparation of accurate, informative reports that are fairly stated.

Because of inherent limitations in any system of internal accounting and administrative control, errors or irregularities may nevertheless occur and not be detected. Also, projection of any system evaluation to future periods is subject to the risk that procedures may become inadequate because of changes in conditions or that the degree of compliance with procedures may deteriorate.

We conducted this audit in accordance with Generally Accepted Government Auditing Standards (GAGAS) and the International Standards for the Professional Practice of Internal Auditing. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

The recommendations presented in this report include the more significant areas of potential improvement that came to our attention during the course of the examination, but do not include all possible improvements that a more extensive review might develop.

III. RESULTS OF REVIEW

Of the 54 PSAs in our scope period that were subject to the Living Wage requirements, OPI randomly selected 27 of them for detail testing. The following is a summary of the contracts selected for detail testing:

Review of the Living Wage Ordinance
Contracts Selected for Detail Testing

<u>Contract Number</u>	<u>Contractor</u>	<u>Initiating Department/Office</u>	<u>Amount (\$)*</u>
130736	Hillside Children's Center	DRYS	53,171
130087	Rochester Market Driven Community Corporation	Innovation	50,000
130299	CHA Consulting Inc.	DES	316,797
130269	Labella Associates DPC	DES	384,000
129973	Bergmann Associates Architects Engineers	IT	199,960
129977	Lifetime Benefit Solutions	DHRM	111,000
130926	Clark Patterson Engineers, Surveyor, Architects	DES	250,000
130572	Labella Associates DPC	DES	150,000
130874	The Housing Council at Pathstone Inc.	NBD	168,675
131110	William F. McIntyre, PHD, ABPP	RPD	90,000
130709	Labella Associates DPC	DES	110,000
130569	Stantec Consulting Services Inc.	DES	200,000
130355	Computer Technologies USA, LLC	IT	212,250
130140	T Y Lin International Engineering Architecture & Land Surveying PC	DES	328,000
130049	C&S Engineers Inc.	DES	289,302
130499	Bergmann Associates Architects Engineers	DES	60,000
130927	Labella Associates DPC	DES	50,000
130884	T Y Lin International Engineering Architecture & Land Surveying PC	DES	105,000
130239	Popli Design Group	DES	208,000
130726	Erdman Anthony and Associates Inc.	DES	120,000
130895	Rochester Housing Development Fund	NBD	174,774
131143	Coordinated Care Services Inc.	NBD	73,863
130530	Ronals C. Wilcox	Communications	55,000
130493	Rochester Youth Sports Foundation	Communications	50,000
130604	Erdman Anthony and Associates Inc.	DES	200,000
130603	Passero Associates, Engineering, Aritecture & Surveying PC	DES	90,000
130109	Cornerstone Training Institute	DES	111,400

* Rounded to the nearest dollar.

The results of this test work indicate that, in general, contractors comply with the Living Wage Ordinance. However, we noted the following exceptions that require management attention to ensure compliance with the Living Wage requirements.

A. Differing City Contacts Listed for Complainants of Living Wage

The City contact for an employee with a Living Wage complaint that is indicated in the City's Living Wage Procedures for Contract Administrators differs from the contact listed on the Notice to Employees of Living Wage document that employers are required to post in their workplace. The City's Living Wage Procedures for Contract Administrators states that, "A covered employee who believes his/her employer is not complying with the Living Wage requirement may make a complaint to the contract administrator. Upon receipt of a Living Wage complaint, a contract administrator shall immediately inform the Law Department and forward the complaint and all necessary documentation". However, the Notice to Employees of Living Wage document which employers are required to

post in the workplace instructs complainants, "To file a complaint, please call the City of Rochester Office of Public Integrity: 585-428-7245". It should be noted that Living Wage Ordinance No. 2001-36 states that the posted Notice to Employees of Living Wage shall include, "a phone number at the City that covered employees may call to lodge complaints". Therefore, both contacts are acceptable and in compliance with the ordinance even though they list different City contacts where employees can lodge Living Wage complaints.

◆ Recommendation

The Living Wage Procedures for Contract Administrators should be updated to agree with the Notice to Employees of Living Wage that employers are required to post in the workplace. Contract Administrators should inform any potential consultant or contractor to whom the Living Wage provisions may apply of the notice requirement for complainants to contact the Office of Public Integrity.

B. Vendor Wage Certifications

We noted that all vendor request payments for payroll included documentation to support wages paid to employees and that the rate paid was in accordance with the Living Wage Ordinance without exception.

◆ Recommendation

City personnel should continue to ensure that vendors submit wage certifications and that they comply with all directives per the City Ordinance.



City of Rochester

Inter-Departmental Correspondence

To: Timothy Weir, Director of the Office of Public Integrity
From: Charles A. Benincasa, Director of Finance
Date: May 9, 2018
Subject: Living Wage Audit



With respect to the recent Living Wage audit conducted by the Office of Public Integrity, I concur with your recommendation for consistency with all documents as to the employee contact for submission of grievances.

We agreed that the primary contact point should be the Office of Public Integrity.

Please find attached a revised "Living Wage Procedures for Contract Administrators" consistent with the Notice that is posted by contractors at their work place.

Sincerely,

A handwritten signature in black ink, appearing to read "Charles A. Benincasa", written over a horizontal line.

Charles A. Benincasa
Director of Finance

xc: C. Zettek

Attachments



City of Rochester, NY

NOTICE TO EMPLOYEES CONCERNING CITY OF ROCHESTER

LIVING WAGE ORDINANCE

THIS SHALL SERVE AS NOTICE TO ALL EMPLOYEES THAT ANY EMPLOYER WHO IS A CONTRACTOR OR SUBCONTRACTOR DIRECTLY INVOLVED IN PROVIDING A SERVICE TO THE CITY OF ROCHESTER PURSUANT TO A SERVICE CONTRACT THAT INVOLVES THE EXPENDITURE BY THE CITY OF AT LEAST \$50,000 DURING THE PERIOD OF ONE YEAR SHALL BE SUBJECT TO THE REQUIREMENTS OF THE ROCHESTER LIVING WAGE ORDINANCE. COVERED EMPLOYERS SHALL PAY NO LESS THAN A LIVING WAGE TO THEIR COVERED EMPLOYEES, AS SET FORTH IN SECTION 8A-18 OF THE MUNICIPAL CODE OF THE CITY OF ROCHESTER. SUCH EMPLOYEES SHALL HAVE THE RIGHT TO FILE A COMPLAINT WITH THE CITY IF THEY BELIEVE THAT THEIR EMPLOYER IS NOT COMPLYING WITH THE REQUIREMENTS OF SECTION 8A-18, BY CALLING THE TELEPHONE NUMBER LISTED BELOW. COMPLAINTS MUST BE MADE WITHIN ONE YEAR FROM THE DATE OF VIOLATION AND WILL BE INVESTIGATED PROMPTLY BY THE CITY. ALL COMPLAINTS WILL BE TREATED AS CONFIDENTIAL AND WILL NOT BE DISCLOSED TO THE EMPLOYER WITHOUT THE CONSENT OF THE EMPLOYEE, EXCEPT WHEN REQUIRED TO ACCESS INFORMATION NECESSARY TO INVESTIGATE THE COMPLAINT.

To file a complaint, please call the City of Rochester Office of Public Integrity:

585-428-7245

"LIVING WAGE" PROCEDURES FOR CONTRACT ADMINISTRATORS

City employees who are responsible for administering professional services contracts for their department are responsible for ensuring that the requirements of the City's Living Wage Ordinance, Ord. 2001-36 are met. The ordinance requirements are incorporated into City Municipal Code Section 8A-18. Any staff member who is responsible for drafting, negotiating and/or administering a professional service agreement (PSA) is considered to be a contract administrator. Contract administrators are encouraged to carefully read and understand the provisions of § 8A-18 of the Municipal Code. These procedures summarize the requirements of the Living Wage ordinance and sets forth responsibilities of the City and of City consultants.

Commitment to Comply Requirement. Although each Department will be responsible for developing its internal processes for administering the Living Wage requirements, each contract administrator should be aware of the specific requirements set forth in §8A-18. First among the requirements, found in §8A-18D(1), is that if a consultant submits a proposal in response to a formal or informal RFP, the "proposal or application for a service contract...shall include a written commitment by the applicant to pay all covered employees a living wage." Accordingly, each contract administrator should inform all potential consultants/contractors in the RFP's or in any informal correspondence or discussion that will result in a proposal or application for a service contract, where there is any possibility the contract amount will reach \$50,000, that any PSAs of \$50,000 or more will be subject to the Living Wage requirements and this specific commitment. A copy of §8A-18 should be provided to consultants/contractors. The Living Wage requirements are incorporated into the standard City PSA Short and Long form agreements. A copy of the standard City PSA agreement should be attached to the RFP to ensure that consultants/contractors are fully informed about all the Living Wage requirements. Review of proposals received should ensure that the commitment statement was provided.

Notice Requirement. An important requirement is a Notice which is required under §8A-18D (3) (b) to be posted by all "Covered Employers," in a conspicuous place on their premises. A copy of the Notice Form is attached. Although, at the latest, this notice should be sent to the consultant/contractor with the executed PSA, it is recommended that each contract administrator inform any potential consultant/contractor to whom the Living Wage provisions may apply of the notice requirement, as early as possible during negotiations for the agreement. Note that complaints about potential violations of the Living Wage ordinance should be directed to the Office of Public Integrity, at 585-428-7245.

Report Requirement. Another requirement of the ordinance is that Covered Employers must provide reports of job titles, wage rates and benefits of Covered Employees, at the beginning and end of the agreement for single year agreements, and at the beginning, annually and at the end for multi-year agreements. The report required at the commencement of the agreement should be attached to the PSA. These reports should be sent to contract administrators, who shall maintain the documents and monitor compliance with this requirement.

Grievance Procedure. A Covered Employee who believes that his/her employer is not complying with the Living Wage requirement may make a complaint to the Office of Public Integrity (OPI), as stated in the Notice Requirement. If the contract administrator receives a complaint, the complaint should immediately be forwarded to the Office of Public Integrity, which will inform the Law Department of the complaint. The contract administrator should document receipt of the complaint (e.g. a telephone call, a verbal report, a written complaint, etc.) and ensure that the complainant's contact information is correct and forward that document to OPI for follow-up by OPI and the Law Department. If requested, the contract administrator shall assist the Law Department in investigating the complaint. The investigation will include collection and review of all necessary payrolls and documents, and interviews with appropriate persons. Written and oral statements made by a Covered Employee shall be treated as confidential and shall not be disclosed to the Covered Employee without the consent of the employee. While protection of the employee's confidentiality shall be a priority for the City, this provision shall not prevent the City from informing the Covered Employer of the name of the Covered Employee and the basis of the complaint in order to access information necessary to investigate the complaint.