

INTRODUCED BY: **WARD FOUR COUNCILLOR – BRIAN PALMUCCI**

CITY OF QUINCY
IN COUNCIL

ORDER NO. 2016-137

ORDERED:

May 23, 2016

BE IT ORDAINED by the City Council of the City of Quincy Title 15, as amended be further amended to add a new section, Section 15.28 entitled Wage Theft Prevention:

I. Definitions

For the purpose of this Ordinance, the following definitions apply:

- A. “Employee” – a natural person who performs work for an employer operating within the geographic boundaries of Quincy, but shall not include any bona fide independent contractor as defined by G.L. c. 149 § 148B;
- B. “Employer” – any natural person or business, whether or not incorporated or unincorporated, who suffers or permits another to work (1) in the City of Quincy, (2) under a contract to which the City of Quincy or one of its Departments is signatory, or (3) who otherwise maintains a commercial presence in the City of Quincy. This definition excludes:
 - 1) The United States or a corporation wholly owned by the government of the United States; and
 - 2) The Commonwealth of Massachusetts, its subdivisions, and corporate bodies.
- C. “Employ,” including as used in the term “employment” – to suffer or permit to work.
- D. “Independent contractor” – as defined in G.L. c. 149, § 148B (“Massachusetts Independent Contractor Law”) and any applicable regulations or advisory guidance implementing that statute.

- E. “Minimum wage” – as defined in G.L. c. 151 § 1.
- F. “Overtime” – as defined in G.L. c. 151 § 1A.
- G. “Prevailing wage” – as defined in G.L. c. 149 §§ 26-27H.
- H. “Timely Payment of Wages” – as defined by G.L. c. 149 § 148.
- I. “Wage” – as defined by G.L. c. 149, §148.
- J. “Wage Theft” – any action by an Employer, his officers, agents, or employees causing Employer not to make a timely and /or complete payment of wages, prevailing wage, or overtime earned and owing to an employee.
- K. “Application” – an initial application or a renewal of a license or permit.
- L. “City Contractor” – an Employer who holds or seeks to hold a contract for goods, services, or labor with the City of Quincy.

II. City Procurement, City Contracts And Debarment

A. RFP/Bid and Successful Bidder Requirements

1. Every RFP or bid issued by the Purchasing Agent or other City department shall include the certification and disclosure requirements required by this Ordinance.
2. Every RFP or bid issued by the Purchasing Agent or other City department shall notify bidders that they have an affirmative duty to report any criminal or civil judgment, administrative citation, final administrative determination, or debarment against the bidder or any of their subcontractors occurring while their bid is pending to the City, and, if they are the successful bidder, while their contract with the City is in effect, within five (5) business days of receipt. The RFP or bid will identify the City department and individual to whom this must be reported.
3. Every RFP or bid issued by the Purchasing Agent or other City department shall notify bidders that they may not contract with the City during any part of the debarment by the City of State if they have been debarred by the Commonwealth of Massachusetts or the City of Quincy, either voluntarily or

involuntarily, for the entire term of the debarment. Such RFPs or bids shall also notify bidders that they may not use any subcontractor who has been debarred by the City or the State during the period of that subcontractor's debarment.

4. Successful bidders must either:
 - a. Provide a certification of compliance as required by this Ordinance below. To the extent the bidder has been in business for less than three years, it shall provide a certification certifying compliance for the entire period of time for which the entity has been in existence.
 - b. To the extent a judgment, citation, or final administrative order has issued against a bidder within 3 years prior to its bid, provide a copy of the same, in addition to documentation demonstrating that all damages, fines, costs, and fees have been paid to all aggrieved complainants. In addition, the bidder must post a bond, to be maintained for the life of the contract, as specified below.
5. Successful bidders must agree to post the notice available at <http://www.mass.gov/ago/docs/workplace/wage/wagehourposter.pdf> in a conspicuous location accessible to all of their employees. To the extent not all employees would have reasonable access to the notice if posted in a single location by the successful bidder, the successful bidder must inform the Purchasing Agent or other City department of the number and location of postings in order to ensure that the successful bidder provides reasonable notice to all of their employees and agree to make those additional postings.

B. Certification And Disclosures

The Purchasing Agent and any other City department entering into contracts on behalf of the City shall adopt the attached certification and disclosure requirement for all applicants providing:

1. That an applicant certify to the Purchasing Agent or other City department that neither they nor any of their subcontractors have been subject to a Federal or State criminal or civil judgment, administrative citation, final administrative determination, or debarment resulting from a violation of G.L. c. 149, G.L. c. 151 or 29 U.S.C. 201 et seq. within three (3) years of their application;

2. In the alternative, the applicant shall disclose to the Purchasing Agent or other City department any such, criminal or civil judgment, administrative citation, final administrative determination, or debarment and include a copy of the same in their applications.
3. Every City department issuing a Request for Proposals or bids shall notify applicants that they have an affirmative duty to report any criminal or civil judgment, administrative citation, final administrative determination, or debarment occurring while the contract is in effect to the department within five (5) business days of receipt.

C. Reporting and Notice Requirements during the Contract Term

1. Upon request by the Purchasing Agent or other City department, all City Contractors shall furnish their monthly certified payrolls to the City's Purchasing Agent for all employees working on City contracts.
2. To the extent a contract is for a term of one year or more, a City Contractor will provide the Purchasing Agent or other City department with a certification compliant with this Ordinance on the effective date of the contract and at each anniversary thereof until the contract expires.
3. All City Contractors will furnish to the Purchasing Agent or other City department any criminal or civil judgment, administrative citation, final administrative determination, or debarment issued during the term of their contract(s) with the City against the City Contractor or its sub-contractors within five (5) business days of receipt.
4. To the extent required as set forth below, all City Contractors shall maintain a wage bond for the term of the contract(s) with the City.

D. Wage Bonds

Any Successful Bidder or City Contractor admitting in writing to or determined by the Purchasing Agent to have committed a wage theft violation or subject to a criminal or civil judgment, administrative citation, final administrative determination or debarment as a result of a violation of G.L. c. 149, G.L. c. 151 or 29 U.S.C. 201 et seq. within the three (3) year period prior to the date of its bid to contract with the City, shall be required to obtain a wage bond or other form of suitable insurance in an amount equal to the aggregate of one year's gross wages, or for the term of the contract, whichever is less, for all employees, based on an average of its total labor costs for the past two years. Such bond must be maintained for the entire term of the contract(s) and for all contracts of one year or more, proof of maintenance must be provided annually or upon request of the Purchasing Agent or other City department.

E. Suspension or Revocation of Contract/Wage Theft as Material Breach as Conditions in RFP or Bid

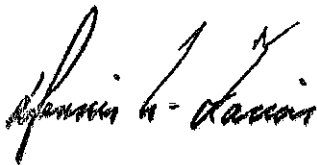
If a City Contractor is found to be in violation of G.L. c. 149, G.L. c. 151 or 29 U.S.C. 201 et seq. or this Ordinance, and therefore in breach of its contract with the City, the City may take one or more of the following actions:

1. Revocation of City Contractor's contract with the City;
2. Suspension of the City Contractor's contract with the City;
3. Debarment from all City contracts for a period of up to three years;
4. Imposing conditions on any future contracts with the City, including but not limited to, the posting of a wage bond and other reasonable requirements.

IN CITY COUNCIL, September 28, 2017

To be Referred to the Committee on Ordinances.
a true copy attest:

Dennis W. Farias, City Clerk



City Clerk