

# City of Alexandria, Virginia

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## MEMORANDUM

DATE: APRIL 21, 2022

TO: THE HONORABLE MAYOR AND MEMBERS OF CITY COUNCIL

FROM: JIM PARAJON, CITY MANAGER

SUBJECT: BUDGET QUESTION #09: PREVAILING WAGE BACKGROUND AND RECOMMENDATION

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In its 2020 legislative session, the Virginia General Assembly 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. Staff is working on a recommendation to City Council to add prevailing wage provisions to the Alexandria City Code for construction contracts larger than \$250,000. 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.

**Background:** 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).

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.

The Virginia Department of Labor and Industry (DOLI), following the legislation, is basing prevailing wage 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 scope of utilizing construction contracts in order to ensure consistency and availability of wage rates. Should the City adopt a wider scope encompassing all public works contracts, it would be required to establish its own prevailing wage determinations for contracts not covered by Davis-Bacon, which would lead to significant delays in the procurement process.

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.

**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. In July 2021, the Arlington County Board of Supervisors adopted a prevailing wage ordinance applicable to construction contracts greater than \$250,000, effective for contracts solicited after January 1, 2022, which staff have reviewed and discussed with Arlington 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.

**Wage and Cost Inflation:** The potential fiscal impact of implementing a prevailing wage policy is cost escalation in markets in which there is a gap between "open shop" wages and prevailing wages. As discussed further below, the potential fiscal impact to the City on its larger construction projects is mitigated somewhat by the presence of larger firms which are already

accustomed to issuing and managing prevailing wage projects due to their work on federal, Washington, D.C., and Maryland contracts. Because Northern Virginia shares a labor market and contractor community with Washington, D.C. and Maryland, any difference between Northern Virginia wage rates and prevailing wages may be smaller than if prevailing wages policies were new to the entire region. To the extent racial and gender-based pay and benefit gaps exist, prevailing wage policies may help close them. Given variation in pay across labor classes, the ultimate impact of prevailing wages on pay and benefits may also vary. For example, the wage gap for highly-skilled labor jobs with relatively high wage rates is likely to be lower than in lesser-skilled labor jobs.

**Competition, Compliance, and Monitoring:** Aside from the potential fiscal impact, prevailing wage policies can discourage competition and may increase the time needed for contract procurement. The burden of additional documentation and sophisticated payroll recordkeeping falls hardest on small businesses, including those designated as Small, Women, and Minority Owned (SWaM) businesses, with whom the City desires to increase business opportunities. This will also impact smaller, local construction companies who regularly bid and perform the City's routine, smaller construction projects. Outreach programs would need to include these firms to ensure they are familiar with the requirements. While a prevailing wage policy could lead to fewer firms bidding on City construction projects, there may be regional firms working in Washington, D.C. and Maryland who have not bid on Virginia contracts, expecting to be underbid by firms not paying prevailing wages. Those firms may choose to participate in City solicitations if the City adopts prevailing wages. As with the impact to wages, the result on competition may be mixed.

Using careful design program requirements within the framework of the VPPA and proactively engaging the contractor community with training, reference materials, and hands-on assistance with compliance can reduce some of the impacts of the increased documentation, monitoring and compliance requirements. This would require additional staff resources to support the program.

The City's program will also rely on support from DOLI. DOLI will be responsible for providing general wage determinations to the City for use in preparing solicitations. Additionally, DOLI staff will provide conformances for classifications not included in the general wage determination. DOLI staff have clarified that they will prioritize wage determination requests, reports of violations by contractor employees, and appeals brought by the City or bidders concerning wage determinations on construction solicitations. Contractors will be required to make a certification to DOLI affirming the compliant prevailing wages to be paid on the contract. Following this certification, City staff will be responsible for ongoing monitoring of compliance among its contractors.

**Recommended City Prevailing Wage Policy:** The effectiveness of a City prevailing wage program will depend 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 Arlington County’s recently 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 would represent a significant change for our contractor community, especially for small firms and SWaM businesses. Staff recommend a proactive approach to guiding contractors through the requirements of Prevailing Wages and what would be required for compliance from them. It is important to note that no matter what compliance approach the City pursues, employees will always be able to report prevailing wage violations to the Department of Labor and Industry to review. If DOLI determines that the contractor failed to pay the 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, time will be needed to finalize design and implementation of the program, including hiring staff and conducting contractor outreach. Among the first steps will be the recruitment of a new staff position to administer the prevailing wage program as well as training of existing purchasing staff. 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 the following timeline:
  - Fall 2022
    - Prevailing Wage Ordinance introduced
    - Submit staffing and technology approach to Council
  - June 2022 – December 2022
    - Add resources and train on procurement policies/procedures

- Develop Prevailing Wage Program, Outreach Program, and additional cost estimates if warranted
- Begin Outreach Program in fall
- January 2023 – May 2023
  - Continue outreach program
  - Implement software solutions to facilitate payroll data reporting
- February 2023 – May 2023
  - Include Prevailing Wage costs in the Proposed FY 2024 – FY 2033 CIP and impact on the FY 2024-2033 project priorities
  - Adoption of FY 2024 – FY 2033 CIP
  - Apply the ordinance to a pilot CIP project
- July 2023
  - Prevailing Wage Ordinance effective for all projects July 1, 2023 and forward

**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 – FY 2021). The City’s consultant, Faithful+Gould, assessed that cost increases for contracts above \$500,000 would be relatively low (0-5%) because large contracting firms in the Washington, D.C. market likely already pay prevailing wages due to their body of work presumed to include 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 percent.

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.

For the Proposed FY 2023 – FY 2032 capital planning period, the total cost increase is estimated at \$117.2 million on a total Proposed CIP budget of \$2.73 billion (4.3%). Of this forecasted increase, an estimated \$21.4 million would be attributable to the impact of a Prevailing Wage Ordinance on schools capital projects. Additionally, there will be an annual operating cost impact of approximately \$130,000 for staff and to purchase compliance related software.