Frequently Asked Questions about the Minimum Wage for the Commonwealth's Service Providers

1. Will the Executive Order regarding the Minimum Wage for State Employees and the Commonwealth's Service Providers apply to grants awarded to private companies? For example: several grocery and drug stores are awarded grants through CHFS to upgrade their electronic scanners in order to allow customers to use their WIC cards as payment.
   - No. The model being used is a Federal Executive Order that raises the minimum wage for all federal contracts and that Federal Executive Order specifically excludes Grants so we will as well.

2. Should a PSC that is already approved with a July 1 effective date be amended?

   - No

3. Do contracts need to be modified to add the minimum wage requirement?

   - No. The requirement must be added at the time the contract is renewed.

4. The Universities are exempt under the Executive Order. Does that exemption extend to contracts with state agencies in which the university is providing services for the agency?

   - No. Agreements between state agencies and Universities must include the minimum wage requirements.

5. I am preparing a solicitation for a freezer and the selected vendor must install the freezer on site. Does the minimum wage requirement apply?

   - Yes. Since the vendor will provide a service by installing the equipment, the minimum wage provisions do apply.

6. Should the executive order be attached separately to the solicitation or should it be included in the terms and conditions?

   - It should be attached as a "standard" attachment to the solicitation. Standard attachments post to VSS as attachments with the assembled document.

7. Do RFQ's that have closed and are in the process of award with an effective date of July 1 have to be re-solicited?

- No. PO2's awarded from closed RFQ's may go forward as is.

8. On contracts where a commodity purchase includes installation, would just completing the affidavit for services suffice, since it has the language or are both affidavits (service and goods) required?

   - Only the affidavit for services is required to be signed and notarized when the purchase is a commodity and a service such as installation.

9. Should the Executive Order be attached separately or should it be included in the terms and conditions?

   - It should be attached as a standard attachment to the header of the document in eMARS.

10. We have several RFQ's that have closed, in the process of awarding the PO2's, with effective dates of July 1. Per the Executive Order, the PO2 will require the minimum wage language, but the solicitation, of course, did not, do we have to rebid?

    - The PO2's awarded from closed RFQ's may go forward as is.

11. The RFP is final and I am in process of making the award. If I inform the vendor of the minimum wage requirement and the vendor does not agree do I have to rebid, or can we go to the next best evaluated vendor, if there is one?

    - That decision is up to the agency, however, PO's awarded from closed solicitations may go forward as is.

12. If the entity is a covered under the Executive Order, I would presume the hourly rate applies regardless of whether the employee is full time or part-time, correct?

    - The hourly rate applies regardless of the employee's full time or part time status.

13. We previously were told that this Executive Order process did not affect modifications, but are we to assume any modifications done after July 1st would need to include this new language?

    - You are <u>not</u> required to add the minimum wage language for modifications.

      If you renew a PSC, you are required to add the language and obtain a new signed Affidavit for Services.

      If you have a MOA that expires and you extend the expiration date and add funding for that extension then you are required to add the minimum wage language.

14. The janitorial vendor requested a price increase due to the new minimum wage required rate. Is there specific information and/or documentation we should ask the vendor to provide to show proof of the number of employees, etc?

    - As with any price increase request, documentation to substantiate the increase should be provided by the vendor. Require the vendor to provide the number of employees per week assigned to each contract and the number of hours per week each employee works to determine if the requested increase is reasonable and not excessive. The decision to grant such price increase is up to the agency.

15. Our janitorial contracts are set up as a monthly rate. The contract is written to describe the duties that are to be completed each week an hourly rate and hours to be worked are not stated. Should the contracts be change to an hourly rate and number of hours per week under the $10.10 minimum hourly rate?

    - The contracts are not required to be changed to an hourly rate. The vendors will be required to sign the affidavit for services affirming that will pay their employees who work on a state contract at least $10.10 per hour. The contracts must include the minimum wage clause and have the Executive Order attached.

16. I have a contract with a hotel for a conference. Will the minimum language need to be included in the contract?

    - Yes, if the services will be provided on or after July 1st.

17. The universities have told us that they are exempt. Will Finance contact the universities to explain the Minimum Wage Executive Order?

    - Yes. The Finance Cabinet is contacting the University of Kentucky.

18. I have a contract for tree removal. Will the Minimum Wage provisions apply?

    - Yes

19. What should we do if we are aware that the vendor is not paying at least $10.10 to their employee as required?

    - The vendor must sign the affidavit affirming that they are complying with the Executive Order. However, the Labor Cabinet has the authority to investigate such allegations.

20. Does the Executive Order apply to Real Property leases?

    - No, unless the Real Property lease includes the cost of janitorial or other services. The agency must make a judgment as to whether a service element is included in the lease.

21. Are contracts funded by Federal grants exempt from the Minimum Wage provisions?

    - The source of funds does not matter. Grant MOA in this context means a MOA that involves funds, of any type, given by a state agency to a public entity or a 501(c)(3) nonprofit for a purchase or a project without direct oversight by the state agency.
    - The exception is Federal Block Grants, as defined in KRS 45.350, which are exempt.

22. Does the Executive Order apply to sponsorships?

    - No

23. Does the Executive Order apply to subcontractors?

    - Yes. It applies to both the prime and any subcontractors. The prime contractor is responsible for ensuring the subcontractors are compliant.

24. Do subcontractors need to sign the affidavit for services?

    - No

25. Does the Executive Order apply to out of state vendors and their subcontractors?

    - Yes

26. Some of our Grant MOA's are with 501(c)(3) nonprofits. According to the presentation at the June 17, 2015 eMARS User Group Meeting would we no longer require 501 (C)(3) nonprofits to submit an affidavit?

    - Contracts with 501 (C) (3) nonprofits require an affidavit. Before the Governor signed the Executive Order for Minimum Wage, public vendors, such as universities, local government, etc. <u>did not</u> have to sign an affidavit. Private vendors and 501(c)(3) nonprofit vendors <u>did</u> have to sign the affidavit for Contractors and Bidders. That has not changed. What has changed is which affidavit the Private and 501(c)(3) nonprofit vendors sign.
        - Affidavit for Services - has the minimum wage language. Use when the minimum wage provisions are applicable
        - Affidavit for Commodities - does not have the minimum wage language (original affidavit). Use when the minimum wage provisions are not applicable.

27. Does office rent require the $10.10 at the agency level or is the Division of Real Property responsible for compliance?

    - The minimum wage provisions would not apply to rent unless the rent includes the cost of a service, such as janitorial services. The agency that creates the documents is responsible for including the minimum wage clause, the Affidavit for Services and attaching the Executive Order to the solicitation/contract.