

309-41 Public Works

309-41. Participation of City Residents in Public Works Contracts.

1. DEFINITIONS. In this section:
 - a. "Construction" means either new construction work or repair work on any roads, bridges, sewers, streets, alleys, buildings or any other public work whatsoever.
 - b. "Contract" means a binding agreement executed by the city in which the city is committed to expend or does expend its funds or other resources.
 - c. "Contractor" means a separate and distinguishable business entity participating or seeking to participate in the performance of a contract.
 - d. "Department" means the department of public works or other city department administering a city construction contract.
 - e. "Resident" means a person who maintains his or her place of permanent abode within the city. Domiciliary intent is required to establish that a person is maintaining his or her place of permanent abode in the city. Mere ownership of real property is not sufficient to establish domiciliary intent. Evidence of domiciliary intent includes, without limitation, the location where the person votes, pays personal income taxes or obtains a driver's license.
 - f. "Unemployed or underemployed" means that the resident has worked less than 1200 hours in the preceding 12 months or has not worked in the preceding 15 days or, regardless of employment status, has household income at or below the federal poverty guidelines as adjusted by the Wisconsin department of public instruction to define eligibility for reduced lunch in public schools.
 - g. "Worker hours" means the total hours worked on a construction contract by skilled and unskilled construction trade workers, whether those workers are employed by the contractor or any subcontractor. In determining the total worker hours to be furnished at a construction site, the number of hours devoted to all tasks customarily performed on a construction site shall be included, whether or not such tasks are performed on the construction site. "Worker hours" includes work performed by persons filling apprenticeships and participating in on-the-job training programs and excludes the number of hours of work performed by all non-Wisconsin residents.

2. REQUIREMENTS. All construction contracts and other contracts as the commissioner of public works may determine, which are funded in whole or in part by city, state or federal funds, where appropriate and consistent with law, shall contain:

- a. A requirement that 40% of the worker hours, subject to the provisions of sub. 3-a-2, shall be performed by unemployed or underemployed residents, and that contractors and subcontractors shall give fair consideration to all segments of the population including women and minorities.
- b. A provision in which the contractor certifies that it knows of the provisions of this section and intends to comply with them.
- c. A requirement that contractors and subcontractors maintain personnel records listing the name, and address, race and gender of all employee utilized for each contract, and any records demonstrating that the employees utilized by the contractor in meeting the requirements of this section are residents. These records shall be maintained for 7 years after the contractor has received final payment under the contract, and shall be made available to the department for inspection upon reasonable notice.
- d. A requirement that at least one quarter of the worker hours required in par. a be performed by unemployed or underemployed residents who maintain their permanent residence in high or extreme poverty ZIP Codes. The poverty rate for each ZIP Code shall be calculated by the city clerk within 90 days of the effective date of this ordinance, and by January 1 every 5 years thereafter.
- e. A requirement that all contractors and subcontractors utilize a local workforce development agency as a first-source option for recruiting applicants for both new and replacement employment, as provided in s. 355-11.

3. ADMINISTRATION. The department shall be responsible for the planning implementation and enforcement of this section.

a. Planning and Implementation. Prior to the commencement of any construction or other project covered by this section, the department shall:

a-1. Identify the approximate number of job positions and worker hours involved in the project.

a-2. Determine the appropriate level of participation of unemployed or underemployed residents of the city for inclusion in the contract specifications. The appropriate level of participation shall be presumed to be 40%, unless the department determines there is sufficient reason to impose a lesser requirement. However, the commissioner of public works may require greater levels of participation if the commissioner finds that such levels may be warranted for certain contracts. Up to one-third of required worker hours may be achieved by documenting the use of unemployed or underemployed residents on projects undertaken by the contractor where such compliance is not required, or by hiring unemployed or underemployed residents on a full-time permanent basis for non-construction job categories connected to the project. Such adjustments must be proposed in an affidavit on a form provided by the department setting forth the facts upon which the request for adjustment is based.

b. Monitoring and Enforcement. The department shall:

b-1. Monitor compliance with the provisions of this section.

b-2. Require all contractors and subcontractors, prior to commencement of the work, to submit affidavits on forms supplied by the department from employees utilized to meet the requirements of this section, stating that the employee is both unemployed or underemployed and is a resident.

b-3. Require all contractors and subcontractors to submit within 10 days following completion of the work or every 3 months, whichever comes first, contract time reports listing workers by name, race, gender, residential address, work classification and hours worked.

b-4. Arrange for an independent audit with respect to the residents preference program, to be performed every 3 years, by a certified accounting firm licensed to perform audits in the state of Wisconsin or by the city comptroller.

b-5. Maintain racial demographics and residency information regarding job positions in all construction contracts administered by the department.

b-6. Ensure that all data required for reporting under this section are maintained in a centralized labor or contract compliance software system, as provided in s. 370-3-5.

b-7. Maintain, and verify every 3 years in coordination with the workforce development coordinator, a list of residents qualified under this section, including information relating to skills and sector-specific work experience.

3.5. EXCEPTIONS. a. If a contractor cannot meet the participation requirements of sub. 2-a, the appropriate level of participation may, at the discretion of the department, be met by utilizing unemployed or underemployed residents to work on concurrent projects in any Wisconsin county, provided those residents began their employment on projects in the city.

b. For every worker hour exceeding the requirements of sub. 2-d, one-and-a-half hours shall be credited toward meeting the requirements of sub. 2-a. For every worker hour exceeding the requirements of sub. 2-d performed by a worker hired from an extreme poverty ZIP Code, 2 hours shall be credited toward the requirements of s. 309-41-2-a.

c. The hours worked by a resident who meets the definition of unemployed or underemployed solely under the 15-day provision of sub. 1-f shall not be credited toward meeting the contract participation requirements of sub. 2-a unless the resident had not worked on the same project for the same contractor prior to the 15-day period.

4. ANNUAL REVIEW. The residents preference program established by this section shall be reviewed by the common council, in consultation with the mayor, and the residents preference program review commission on or before October 1 of each year, to review the necessity for the continuation of the program and, if necessary, adjust the requirements of the program in an attempt to reduce the disparity between the unemployment statistics among different zip codes in the city and between the city as a whole and the Milwaukee metropolitan area.

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5. ANNUAL PROGRAM REPORT.

The department of public works, in coordination with the department of compliance and engagement, the department of city development and the residents preference program review commission, shall prepare, on or before October 1 of each year, a residents preference program report on the city's success in achieving the goals of the program. The performance report shall include the following:

- a. The number and dollar amount of all construction contracts let.
- b. The number and dollar amount of construction contracts which incorporated a residency requirement and the percentage of unemployed resident worker hours required.
- c. If not all construction contracts included a residency requirement or if some contracts contained a requirement of less than 40% of worker hours, the department shall state the reason for this difference.
- d. The number and dollar amount of non-construction contracts which incorporated a residency requirement, along with a summary of the reasons for not incorporating a residency requirement in some or all of those contracts.
- e. Full disclosure of the department's reasons for adjusting the participation percentage goal for individual contracts or groups of contracts.
- f. The percentage of total hours worked by city, non-city and non-state residents on construction contracts which included the residency requirement.
- g. Information to assist the common council in its annual reappraisal of the residents preference program, including the number of individual participants by job type, the number of new residents hired during the year under the program and the number of program participants who advanced to apprenticeships and on-the-job training programs.
- h. Unemployment rates in the city and the Milwaukee metropolitan area and the sources of the statistics.
- i. Recommendations regarding the necessity for continuation of the program and methods of making the program more successful.
- j. Information relating to worker hours by zip code, race, gender, trade and hourly wage.

6. ADOPTION OF RESOLUTION.

As soon as practicable after review of the residents preference program as provided in sub. 4, the common council shall adopt a resolution stating the results of its reappraisal of the necessity for continuance of the residents preference program and the required participation percentage goals. The department shall prepare said resolution for common council consideration each year.

7. SANCTIONS.

Every city contract awarded under this section shall contain language indicating that if any document submitted to the department by a contractor, subcontractor, bidder or individual contains any false, misleading or fraudulent information, or if a contractor or subcontractor fails to comply with this section, the department may direct the imposition of any of the following sanctions:

- a. Withholding of payments.
- b. Termination, suspension or cancellation of the contract in whole or in part.
- c. After a due process hearing, denial of right to participate in future contracts awarded by the city for 2 years.

8. PENALTY.

Any person, firm or corporation knowingly engaging in fraud, misrepresentation or in any attempt, direct or indirect, to evade the provisions of this section by providing false, misleading or fraudulent information shall, upon conviction, forfeit not less than \$2,000 or more than \$5,000 together with the costs of prosecution, and upon default of payment, shall be imprisoned in the county jail or house of correction not to exceed 90 days, or until the forfeiture costs are paid.

309-51. Rules for the Administration of the Metropolitan Sewerage District User Charges.

1. OVERALL RESPONSIBILITY FOR

ADMINISTERING USER CHARGES. The commissioner of public works shall administer the sewer user charge. He shall apply the rules contained herein and make such amendments subject to approval by the utilities and licenses committee of the common council as may be required from time to time for proper application of the charge.