



MEMORANDUM

July 20, 2017

TO: City Council
David M. Campbell, City Manager

FROM: Jeff D. Cameron, Public Works Director

SUBJECT: Apprentice Utilization Requirements for Construction Contracts

Background

In 2000, the city council members and staff were approached by representatives of various local labor organizations regarding a need for skilled construction trade workers in the Longview/Kelso area. In response to that need, on November 16, 2000, the City Council adopted Resolution No. 1704, creating a pilot program requiring construction contracts with an estimated cost over \$1 million to be awarded to contractors participating in an approved apprentice program. No specific goal for apprentice hours was included, and the resolution automatically expired on December 31, 2002.

In 2005, local labor organizations requested the apprentice participation requirement be re-established and the threshold of project cost for contracts requiring apprentice utilization be lowered to provide a greater number of apprentice opportunities. On December 15, 2005, the City Council adopted Resolution No. 1824, requiring for each construction contract with an estimated cost of \$500,000 or more, at least fifteen percent (15%) of the total labor hours employed on the project, excluding foremen, superintendents, owners and workers not subject to prevailing wage requirements, shall be performed by apprentices enrolled in apprenticeship programs approved or recognized by the Washington State Apprenticeship and Training Council.

In 2009, local labor organizations again contacted staff and city council members with a request to increase the City's utilization of apprentices on its construction contracts. The request from the labor organizations included lowering the estimated contract cost threshold, requiring apprentice utilization in each trade working on the project rather than an aggregate utilization goal for the entire project, and increasing the severity of the consequences for a contractor who fails to meet the utilization requirements. On September 24, 2009, the City Council adopted Resolution No. 1938, requiring for each construction contract with an estimated cost of \$250,000 or more, at least fifteen percent (15%) of the labor hours worked in each apprenticeable trade on the project, excluding foremen, superintendents, owners and workers not subject to prevailing wage requirements, shall be performed by apprentices enrolled in apprenticeship programs approved or recognized by the Washington State Apprenticeship and Training Council. This requirement applies to the labor hours of the general contractor and all subcontractors.

Apprentice Utilization Requirements for Construction Contracts

With the requirement for the contractor to use apprentices in each apprenticeable trade, and because the general contractor is required to self-perform a portion of the work, the general contractor must be enrolled as a training agent in an approved apprenticeship program. Staff initially required contractors to be enrolled training agents prior to award of the contract, allowing time between the bid opening and award of the contract for the contractor to become a training agent. This resulted in undesirable delays in awarding the contract, and at least once the contractor failed to become enrolled as a training agent and their bid had to be rejected and the contract awarded to the next lowest bidder.

To avoid project delays and potential bidding problems, staff then began requiring general contractors to be enrolled training agents at the time of submitting their bid. This eliminated the potential for project delay and bidding problems, but some low bidders have been rejected because they were not enrolled training agents at the time of bid.

Current Situation

Since Resolution No. 1938 was adopted in 2009, no contractor has met the City's apprentice utilization requirement of at least 15% of the apprenticeable labor hours in each trade. Some contractors have met or exceeded the 15% requirement for certain trades, but have not met the requirement in all trades. Additionally, contractors routinely request waivers of the apprentice utilization requirement for a variety of trades, claiming that apprentices are not available.

Prior to adoption of Resolution No. 1938, the Fair Contracting Foundation (FCF), a non-profit labor/management organization dedicated to ensuring fairness in public works contracting and compliance with prevailing wage laws in Oregon and Washington, indicated they would periodically monitor certified payroll and assist monitoring compliance with the City's apprentice utilization requirements. The FCF investigated one project soon after adoption of the resolution, but has not subsequently assisted with monitoring compliance. Staff does not have the time or access to records to confirm the validity of contractors' claims regarding apprentice availability.

To evaluate the status of apprentices available in this area and consider ways to improve the effectiveness of the City's apprentice utilization program, I discussed our situation and experience with the local building trades council and the regional apprenticeship coordinator for the state Department of Labor and Industries. Information they provided indicate:

- Apprentices are available in most trades that would perform work on City projects.
- Contractors can enroll as a training agent with an apprenticeship program on a project contract basis – they are not required to enroll on a company-wide basis to use apprentices on all of their projects.
- Non-union contractors can enroll as a training agent with union apprenticeship programs, and may do so on a project contract basis.

Apprentice Utilization Requirements for Construction Contracts

- Enrollment as a training agent with an apprenticeship program should be quick.
- The Construction Industry Training Council of Washington provides apprenticeship programs for ten common construction trades. Non-union contractors may enroll as a training agent in these programs rather than union sponsored apprenticeship programs.

Further, the labor council indicated they have challenges with some contractors utilizing apprentices on their jobs but not reporting the apprentice hours to the apprenticeship program, thus the apprentice does not get credit for those hours toward completing their apprenticeship.

Based on my discussions with the building trades council and Labor and Industries staff, we have modified our project specifications regarding apprentice utilization to provide greater flexibility at bid time, but require more documentation of their compliance with the City's apprentice requirements. The major contract specification provisions are summarized as follows:

- The contractor no longer must be an enrolled training agent at the time of submitting their bid. They can enroll in the necessary apprenticeship programs after they are determined to be the low bidder and/or awarded the contract. They still must comply with apprentice utilization for the work the contractor self-performs, which requires enrollment as a training agent early in the performance of their work.
- The contractor must submit apprentice utilization forms documenting the total labor hours and the number of apprentice hours worked for each apprenticeable trade employed on the project.
- The contractor must submit copies of certified payroll to confirm their apprentice utilization documentation. Certified payroll must be submitted prior to each progress payment to document compliance with prevailing wage requirements.
- For each apprenticeable trade that the contractor will not meet the required 15% apprentice utilization, they must submit written documentation from an authorized representative of the apprentice program for that trade, that insufficient apprentices are available to meet the requirement, or that available apprentices are not willing to work on the project.
- The contractor must submit written documentation from an authorized representative of each apprentice program utilized, that all apprentice utilization hours for that trade(s) have been reported to the apprentice program.

These contract specifications may be modified in the future based on our continuing experience implementing the apprentice utilization requirements. And staff will monitor the contractor's progress toward meeting the City's required apprentice participation level and provide them regular updates on their participation level.

Apprentice Utilization Requirements for Construction Contracts

In accordance with Resolution No. 1938, a contractor failing to meet the apprentice utilization requirements without qualifying for an exemption or waiver, or without making a good faith effort to comply, will be debarred from City construction contracts for a two-year period following final acceptance of the project.

Copies of Resolution Nos. 1938, 1824, and 1704, and our current construction contract supplementary conditions, are attached for your information.