

Apprenticeship Training Program for Construction Contracts

RULES AND REGULATIONS

Authorization

These RULES AND REGULATIONS are promulgated under authority of City Ordinance 2003-347, which was adopted by the City Council on October 21, 2003, and amended by Ordinance 2009-76, which was adopted by City Council on March 18, 2009. These Ordinances were enacted under authority granted by Chapter 571 of the Laws of 2001, as codified in Section 816-b of the New York State Labor Law.

Summary of City Ordinance 2003-347, as amended

City Ordinance 2003-347, as amended, makes it the policy of the City of Rochester "to promote apprenticeship training programs." The scope of the Ordinance includes any construction contracts, as defined in the Ordinance, that are in excess of \$250,000. The Ordinance further requires that the contractors for such a contract and for any subcontract thereto in excess of \$100,000, prior to entering into such public works contracts, "have apprenticeship agreements, appropriate to the type and scope of work to be performed, which have been registered with and approved by the New York State Commissioner of Labor." The Ordinance authorizes the Commissioner of Environmental Services "to promulgate such rules and regulations necessary and appropriate for the implementation and enforcement of this ordinance." The Ordinance also requires that the "City shall provide assistance to contractors to its greatest extent possible in obtaining State approval of apprenticeship programs;" Such approval shall be obtained before a contractor submits a bid for a construction contract or is awarded a subcontract.

Definitions

Appendix A contains definitions of terms used. Appendix A is an integral part of these RULES AND REGULATIONS.

Effective Date and Administration

The RULES and REGULATIONS shall be effective for contracts advertised for public bid after January 1, 2004, and, as revised, shall be effective for contracts advertised for public bid after March 19, 2009. They shall be administered by the Commissioner of Environmental Services. Direct inquiries to:

Commissioner of Environmental Services
City of Rochester
30 Church Street, Room 300B
Rochester, NY 14614-1278
(585) 428-6855 office
(585) 428-6010 fax

Application

1. These RULES AND REGULATIONS shall apply to any construction contract in excess of \$250,000, and that is subject to the Rules and Regulations, and to any subcontract thereto in excess of \$100,000. The contract value for determination of application shall be the original contract price, including any items that are bid as alternates and accepted in the original contract or subcontract. Any field changes, made after contract award, made for any reason, shall not be counted in determining if a contract or subcontract exceeds the threshold value.

2. These RULES AND REGULATIONS shall only apply to public works contracts as defined in Appendix A. Accordingly, they shall not apply to any of the following types of contracts:

- Contracts for the incidental or routine repair, operation or maintenance of any city building, street or street appurtenance, facility or structure and for major repair or maintenance where the City determines that the contract does not afford an opportunity for an apprentice to accumulate a significant amount of required on-the-job training;
- Contracts for the delivery of public services;
- Contracts for any professional service, whether associated with a public works construction contract or not;
- Contracts for the purchase of materials, supplies or equipment;
- Contracts for the purchase, delivery and/or installation of furnishings, furniture and/or equipment; and
- Any other contract that does not meet the definition of a construction contract as defined in Appendix A.

3. These RULES AND REGULATIONS shall not apply in the following situations:

- Any services procured through New York State Contracts as administered by the New York State Office of General Services; and,
- Any contracts utilizing federal, state, county or other funding assistance to the extent that the funding agency has indicated in writing that use of such funding precludes application of the Apprenticeship Training Program or the City determines that funding provisions make such application impractical. If the agency has an approved program available that provides for or encourages apprenticeship training, the City shall investigate applying that program to the contract and, if feasible, do so to the fullest practical extent.

Procedures

1. A contractor who submits a bid for a City contract for which the contract amount exceeds \$250,000 shall submit with the bid package a copy of the following for each apprentice agreement intended to meet the requirements of this regulation:

- a. The current New York State Department of Labor Form AT-10, "Apprentice Training Program Registration Agreement," issued to the contractor or other sponsor of the apprentice training program; and
- b. If the apprentice training program is not sponsored by the contractor, an executed copy of City Apprenticeship Training Program Form AP3, "Agreement to Utilize Apprentices on a City of Rochester Construction Contract."
- c. The Contractor shall also submit with the bid package the following:
 - (1) A listing of any contractor proposed to hold a subcontract that exceeds \$100,000 in value, including the name of the subcontractor, the scope and value of work proposed to be performed, and the name of any apprenticeship trade for which an approved apprenticeship agreement will be submitted, and
 - (2) Copies of approved apprenticeship agreements intended to meet the requirements of this regulation as detailed in 1.a and 1.b above.

2. A contractor who, subsequent to contract award, proposes to enter subcontract that exceeds \$100,000

in value, shall submit apprenticeship agreements as described in 1a or 1b above with the proposed subcontract documents to the City Project Manager for approval prior to entering the subcontract.

3. The City may verify that any apprenticeship agreement submitted by a contractor is current and valid.

4. If a contractor fails to timely submit valid apprenticeship agreements, the contractor may be deemed to be non-responsive, and may be disqualified from further consideration for the pending contract or subcontract.

Assistance

The City shall provide assistance to contractors to its greatest extent possible in obtaining State approval of apprenticeship programs by:

1. Referral to the New York State Department of Labor Rochester regional office and apprenticeship training representatives for apprenticeship training program sponsorship, referral to State-approved programs, recruitment of apprentices, assistance with program maintenance, and other technical assistance;
2. Supporting programs and activities that encourage or assist contractors to develop or participate in apprenticeship training programs;
3. Other means which may be determined on a case by case basis.

Waivers

1. No waivers shall be provided to the general requirement that contractors have current, valid apprenticeship agreements, appropriate to the scope and nature of the work to be performed under the contract, registered with the New York State Commissioner of Labor. Failure to document such agreements will result in a contractor being deemed non-responsive, and such contractor will be disqualified from consideration for the pending contract.

2. The Commissioner may grant a waiver for a apprenticeship agreement specific to a particular trade that is appropriate to the scope and nature of the work to be performed under the contract if:

A. The New York State Department of Labor certifies that no apprenticeship training is available or may be approved for that trade within the Rochester Labor Market by the time of contract award or of any subcontract proposed for approval subsequent to contract award;

B. The application of the requirements of the apprenticeship program for City construction contracts would prevent the city or the bidder from obtaining a contractor or subcontractor that is qualified to perform specific contract work, regardless of the price for that work.

Enforcement

If the contractor fails to comply with the requirements of the Apprenticeship Training Program for Construction Contracts, the City will deem the contractor non-responsive and disqualify the contractor from consideration for the pending contract.

Appendix A

Definitions

The following definitions apply to the RULES AND REGULATIONS promulgated herein to provide guidance on the implementation and enforcement of City of Rochester Ordinance 2003-347, as amended. The definitions provided here are an integral part of these RULES AND REGULATIONS.

Alteration - the process of improving real property that adds value to its permanent value and prolongs its intended life appreciably; does not include repair, operation, or routine maintenance of existing real property.

Apprenticeship Agreement - shall be:

- a. The current New York State Department of Labor Form AT-10, "Apprentice Training Program Registration Agreement," issued to the contractor or other sponsor of the apprentice training program; and,
- b. If the apprentice training program is not sponsored by the contractor, an executed copy of City Apprenticeship Utilization Program Form AP3, "Agreement to Utilize Apprentices on a City of Rochester Construction Contract."

Construction contract - shall mean any City public works contract for an amount in excess of \$250,000, or subcontract thereto in excess of \$100,000, for construction, reconstruction or improvement of any building, facility or physical structure of any kind.

Construction - the process of building, altering, or improving any public structure or building, demolition of existing real property, or other public improvement of any kind to any public real property; does not include the operation or routine maintenance and repair of existing real property.

Contractor - shall mean a contractor which directly employs labor under a construction contract or subcontract.

Demolition - the process of taking down or removing a facility or physical structure from real property.

Improvement - the process of alteration or renovation of real property that adds value to its permanent value and prolongs its intended life appreciably, and major maintenance and repair of real property that affords an opportunity for an apprentice to accumulate a significant amount of on-the-job training; does not include the incidental or routine repair, operation, or routine maintenance of existing real property.

Installation - the process of installing material and equipment in relation to a construction contract as defined above; does

not include the operation or routine maintenance and repair of existing real property.

Maintenance and Repair - shall mean the upkeep of real property that neither adds to its permanent value nor prolongs its intended life appreciably, but instead keeps it in an efficient operating condition.

Real Property - is the land and its permanently affixed buildings and structures.

Reconstruction - the process of rebuilding, altering, or improving any public structure or building, or other public improvement of any kind to any public real property; does not include the operation or routine maintenance and repair of existing real property.

Rehabilitation - the process of reconstruction, improvement, alteration, installation, or renovation of real property that adds value to its permanent value and prolongs its intended life appreciably; does not include the operation, or routine maintenance and repair of existing real property.

Renovation - the process of reconstruction, improvement, installation and alteration of real property that adds value to its permanent value and prolongs its intended life appreciably; does not include the operation or routine maintenance and repair of existing real property.

Rochester Labor Market - shall mean those counties served by the Rochester Regional Office of the New York State Department of Labor.

[Note: In January 2004 that area includes the following nine counties: Genesee; Livingston; Monroe; Ontario; Orleans; Seneca; Wayne; Wyoming; and Yates]

Subcontractor - shall mean an individual, partnership, corporation or joint venture to whom the construction contractor sublets any part of the project.