

2.18.034 Contractor Provisions.

The contractor rules in this Section shall apply to any contractor, as defined in this Section, which has submitted a bid or been awarded a contract in an amount exceeding \$500,000.00; all other provisions of [Chapter 2.18](#) shall apply.

a. Definitions.

For purposes of this Section, the following terms are defined as follows:

1. The word "contractor" wherever used herein, is hereby defined as any person, partnership, corporation, association or joint venture which has been awarded a contract in an amount in excess of \$500,000.00, and includes every subcontractor on such a contract.
2. The word "subcontractor," wherever used herein, is hereby defined as any person, partnership, corporation, association or joint venture which supplies any of the work, labor services, professional services, supplies, equipment, materials or any combination of the foregoing under a contract with the contractor on a contract.
3. The word "contract," wherever used herein, is hereby defined as any contract awarded by the City whereby the City is committed to expend or does expend its funds, including funds received from other government agencies, in return for work, labor services, financial services, technical services, professional services, supplies, equipment, materials or any combination of the foregoing.
4. The word "bidder," wherever used herein, is hereby defined as any person, partnership, corporation, association or joint venture seeking to be awarded a City contract.
5. The term "construction contract," wherever used herein, means any City contract for the construction, rehabilitation, alteration, conversion, extension or repair of buildings, streets or other improvements to real property.
6. A "construction contractor" is a business concern that contracts with the City for the construction rehabilitation, alteration, conversion, extension or repair of buildings, streets or other improvements to real property and is the signatory as the builder of the prime construction contract for the project, responsible for the means and methods, material, labor, equipment to be used in the construction execution of the project in accordance with the plans, specifications and contract documents.
7. The term "other contractor" is a business concern that contracts with the City to provide supplies or services, including professional services.

b. Contract—Apprentice Utilization.

1. For purposes of this Section, only the following definitions shall apply:

The term "apprentice" means any person who is: (a) sponsored into an apprenticeship training program by a contractor that is authorized by a union to sponsor apprentices; or (b) enrolled in a registered apprenticeship program recognized by the Nebraska Department of Labor or United States Department of Labor; or (c) enrolled in, or has graduated in the last two years from a construction training program administered by Southeast Community College or other similar institution.

The term "bid incentive" means an amount deducted, for bid evaluation purposes only, from the contract base bid in order to calculate the bid price to be used to evaluate the bid on a competitively bid construction project.

The term "construction project" means any project to be paid for by the City, but which is not funded in whole or part by any federal or state funds, to construct, rehabilitate, alter, convert, extend or repair of buildings, streets or other improvements to real property, or any portion of any of the same, belonging to the City within its geographical boundaries as they exist or shall exist in the future.

The term "contract base bid" means the total dollar amount a contractor bids on a construction project without factoring any bid incentive or percentage reductions to the bid amount.

The term "labor hours" means the total hours of workers receiving an hourly wage who are employed at the work site. "Labor hours" shall include hours performed by workers employed by the contractor and all subcontractors working at the work site. "Labor hours" shall not include hours worked by non-working foreman, superintendents, owners, and working not subject to prevailing wage requirements.

2. The apprenticeship utilization bid incentive shall apply to construction project advertised after the effective date of the ordinance from which this Section derives having an estimated contract value in excess of \$500,000.00 (based on the City engineer's estimate).

To qualify for the bid incentive, at least ten percent of all labor hours shall be comprised of apprentices as defined in this Section.

The general contractor on any applicable construction project must ensure ten percent apprentice utilization across the project as a whole. Utilization may be in any formula or division within any of the trades working on the project site. The general contractor shall be responsible for the records of the subcontractors.

3. A bidder will receive a five percent bid incentive if they:
 - i. Claim preference and provide evidence of the use of apprentices meeting the definition permitted herein; and
 - ii. Provide evidence of their willingness to contractually commit to an apprenticeship utilization requirement stating at least ten percent of all labor hours on the construction project site will be comprised of apprentices as described in this Section; and
 - iii. Provide the estimated total number of construction job site labor hours and the total number of apprenticeship hours for the construction project.

The lowest, responsive, responsible bidder, taking the bid incentive into consideration, shall be awarded the contract, unless the solicitation provides for additional award criteria. The contract amount awarded shall be the amount of the bid submitted, exclusive of the bid incentive.

During the course of construction, the number of hours may vary from the hours submitted in the bid, but ten percent of the total hours on the actual construction job site must be performed by apprentices.

4. All contractors and subcontractors subject to this Section, must retain verified payroll reports on at least a monthly basis, certifying the names of all workers performing labor hours, their trade, hours worked, with designations for journey level workers or apprentices or other. Verified payroll reports provided as required in this Section are subject to review and inspection by the City of Lincoln and/or its agents for compliance to this Section.
5. The failure by a contractor awarded a contract subject to this Section to comply with its provisions, including the failure to comply with the ten percent apprenticeship utilization requirement after getting the benefit of the bid incentive, is a breach of contract for which the city is entitled to all remedies, including liquidated damages and temporary or permanent cessation of work allowed by law and under the contract. Failure to comply with apprentice utilization requirements is evidence bearing on a contractor's qualification for award of future contracts.

c. Bid Submission Requirements.

All bid specifications for contracts in excess of \$500,000.00 shall include a requirement that the bidder has:

1. Worker's compensation insurance in place for its employees. At the time that the bid is submitted, the bidder must submit proof that worker's compensation insurance is in place for its employees.

d. Contract Requirements.

Any contract awarded to a contractor in an amount in excess of \$500,000.00 after going through a competitive bidding process shall include the following:

1. Contractor must provide proof of worker's compensation insurance when requested by the City or its representatives.
2. A contractual provision requiring that contractor comply with the Nebraska Employee Classification Act.
3. A provision requiring that the contractor provide a list of sub-contractors who will be providing work throughout the term of the contract after award of the contract. Thereafter, contractor shall provide updated lists of sub-contractors performing work by the contract when requested by the City or its representatives.
4. A requirement that all employees are paid via direct deposit or check and a record of payments, with detailed withholdings, is retained.

The City shall have the right to inspect contractor's records as needed in order to confirm compliance with this Section of this Code. The City shall develop procedures for compliance review of general contractor documentation, procedures for remedying compliance issues, and procedures for addressing reports of non-compliance.

e. Penalties for Non-compliance.

1. Refusal by the contractor or subcontractor to comply with any portion of this Section as herein stated and described may subject the offending party to any or all of the following penalties:
 - i. Withholding payments that are due to the contractor who is in violation under the involved contracts until it is determined that the contractor or subcontractor is in compliance with the provisions of the contract;
 - ii. For those contractors who violate any provision of this Section within a two-year period, such contractor shall be excluded from bidding on any contracts with the City or any of its departments or divisions for a period of one year from the date of the second violation;
 - iii. Be declared an irresponsible bidder as defined by Section [2.18.030](#).
2. In the event the sanctions or penalties contained in paragraph (i) or (ii) of subsection (1) are invoked, the following procedure shall be followed: The director of the department for which the contract was awarded will notify the contractor of the facts or circumstances which formed the basis for the allegation that the contractor has not complied with the provisions of this Section, and said notice shall be in writing and received at least ten days prior to any action being taken by the City during which time the contractor may clarify or make corrections.

(Ord. [21236](#) §1; March 21, 2022).