

MOTION BY COUNCILMEMBER

Christopher Jerome

I hereby move that Council Document No. 4244D, Current Series, be amended in the whole by deleting the existing Ordinance in its entirety and substituting in lieu thereof the attached Ordinance.

APPROVED AS TO FORM:

 2/18/21
DEPUTY CITY ATTORNEY DATE

ORDINANCE NO. 4244D

1
2 AN ORDINANCE to add Sections 10-150 to 10-156, entitled "Contractor Provisions" to Chapter
3 10 of the Omaha Municipal Code; to provide for rules and regulations for bids and the
4 award of contracts in an amount exceeding five hundred thousand dollars (\$500,000); to
5 provide an incentive for apprentice utilization in the award of construction contracts by
6 the City of Omaha; to create penalties for non-compliance; and to provide the effective
7 date hereof.

8 BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF OMAHA:

9 Section 1. That Chapter 10, Article V, Division 1, Section 10--150 through Section 10-
10 156 of the Omaha Municipal Code is hereby created as follows:

11 **Sec. 10-150. – Contractor Provisions.**

12 The contractor rules in sections 10-150 to 10-156 shall apply to any contractor, as defined in
13 Section 10-151, which has submitted a bid or been awarded a contract in an amount exceeding
14 five hundred thousand dollars (\$500,000).

15
16
17 **Sec. 10-151. – Definitions.**

18
19 For purposes of sections 10-150 to 10-156, the following terms are defined as follows:

- 20 (a) The word "contractor" wherever used in sections 10-150 to 10-156, is hereby defined as
21 any person, partnership, corporation, association or joint venture which has been
22 awarded a contract in an amount in excess of five hundred thousand dollars (\$500,000),
23 and includes every subcontractor on such a contract.
24 (b) The word "subcontractor," wherever used in sections 10-150 to 10-156, is hereby
25 defined as any person, partnership, corporation, association or joint venture which
26 supplies any of the work, labor services, professional services, supplies, equipment,
27 materials or any combination of the foregoing under a contract with the contractor on a
28 contract.
29 (c) The word "contract," wherever used in sections 10-150 to 10-156, is hereby defined as
30 any contract awarded by the city whereby the city is committed to expend or does
31 expend its funds, including funds received from other government agencies, in return for
32 work, labor services, financial services, technical services, professional services,
33 supplies, equipment, materials or any combination of the foregoing.
34 (d) The word "bidder," wherever used in sections 10-150 to 10-156, is hereby defined as
35 any person, partnership, corporation, association or joint venture seeking to be awarded
36 a city contract.
37 (e) The term "construction contract," wherever used in sections 10-150 to 10-156, means
38 any city contract for the construction, rehabilitation, alteration, conversion, extension or
39 repair of buildings, streets or other improvements to real property.

1 (f) A "construction contractor" is a business concern that contracts with the city for the
2 construction rehabilitation, alteration, conversion, extension or repair of buildings, streets
3 or other improvements to real property and is the signatory as the builder of the prime
4 construction contract for the project, responsible for the means and methods, material,
5 labor, equipment to be used in the construction execution of the project in accordance
6 with the plans, specifications and contract documents.

7 (g) The term "other contractor" is a business concern that contracts with the city to provide
8 supplies or services, including professional services.

9
10 **Sec. 10-152. – Contract – Apprentice Utilization.**

11
12 (a) For purposes of this section, only the following definitions shall apply:

13
14 The term "apprentice" means any person who is: (a) sponsored into an apprenticeship training
15 program by a contractor that is authorized by a union to sponsor apprentices; (b) enrolled in, or
16 has graduated from, a construction technology training program administered by the
17 Metropolitan Community College or similar institution; or (c) any apprentice enrolled in a
18 registered apprenticeship program recognized by the Nebraska Department of Labor or United
19 States Department of Labor.

20
21 The term "bid incentive" means an amount deducted, for bid evaluation purposes only, from the
22 contract base bid in order to calculate the bid price to be used to evaluate the bid on a
23 competitively bid construction project.

24
25 The term "construction project" means any project to be paid for by the City, but which is not
26 funded in whole or part by any federal or state funds, to construct, rehabilitate, alter, convert,
27 extend or repair of buildings, streets or other improvements to real property, or any portion of
28 any of the same, belonging to the City within its geographical boundaries as they exist or shall
29 exist in the future.

30
31 The term "contract base bid" means the total dollar amount a contractor bids on a construction
32 project without factoring any bid incentive or percentage reductions to the bid amount.

33
34 The term "labor hours" means the total hours of workers receiving an hourly wage who are
35 employed at the work site. "Labor hours" shall include hours performed by workers employed
36 by the contractor and all subcontractors working at the work site. "Labor hours" shall not include
37 hours worked by non-working foreman, superintendents, owners, and working not subject to
38 prevailing wage requirements.

39
40 (b) The apprenticeship utilization bid incentive shall apply to construction project advertised after
41 the effective date of this ordinance having an estimated contract value in excess of
42 \$500,000.00(based on the City Engineer's Estimate).

43
44 To qualify for the bid incentive, at least 10% of all labor hours shall be comprised of apprentices
45 as defined in this section.

46
47 The general contractor on any applicable construction project must ensure 10% apprentice
48 utilization across the project as a whole. Utilization may be in any formula or division within any
49 of the trades working on the project site.

1 (c) A bidder will receive a 5% bid incentive (with a total value not to exceed five hundred
2 thousand dollars (\$500,000)) if they:

3 (1) Claim preference and provide evidence of the use of apprentices meeting the
4 definition permitted herein; and,

5
6 (2) Provide evidence of their willingness to contractually commit to an apprenticeship
7 utilization requirement stating at least 10% of all labor hours on the construction project site will
8 be comprised of apprentices as described in this section; and,

9
10 (3) Provide the estimated total number of construction job site labor hours and the
11 total number of apprenticeship hours for the construction project.

12
13 The lowest responsible total bid, taking the bid incentive into consideration, shall be awarded
14 the contract, unless the solicitation provides for additional award criteria. The contract amount
15 awarded shall be the amount of the bid submitted, exclusive of the bid incentive.

16
17 During the course of construction, the number of hours may vary from the hours submitted in
18 the bid, but 10% of the total hours on the actual construction job site must be performed by
19 apprentices.

20
21 (d) All contractors and subcontractors subject to this section, must retain verified payroll reports
22 on at least a monthly basis, certifying the names of all workers performing labor hours, their
23 trade, hours worked, with designations for journey level workers or apprentices or other.
24 Verified payroll reports provided as required in this section are subject to review and inspection
25 by the City of Omaha and/or its agents for compliance to this section.

26
27 (e) The failure by a contractor awarded a contract subject to this section to comply with its
28 provisions, including the failure to comply with the 10% apprenticeship utilization requirement
29 after getting the benefit of the bid incentive, is a breach of contract for which the City is entitled
30 to all remedies, including liquidated damages and temporary or permanent cessation of work
31 allowed by law and under the contract. Failure to comply with apprentice utilization
32 requirements is evidence bearing on a contractor's qualification for award of future contracts.

33
34 **Sec. 10-153. – Bid Submission Requirements.**

35
36 All bid specifications for contracts in excess of five hundred thousand dollars (\$500,000) shall
37 include a requirement that the bidder has:

38 (a) Worker's Compensation insurance in place for its employees. At the time that the bid is
39 submitted, the bidder must submit proof that worker's compensation insurance is in
40 place for its employees.

41
42 **Sec. 10-154. – Contract Requirements.**

43
44 Any contract awarded to a contractor in an amount in excess of \$500,000 after going through a
45 competitive bidding process shall include the following:

46 (a) Contractor must provide proof of worker's compensation insurance when requested by
47 the City's or its representative.

48 (b) A contractual provision requiring that contractor comply with the Nebraska Employee
49 Classification Act.

- 1 (c) A provision requiring that the Contractor provide a list of sub-contractors who will be
2 providing work throughout the term of the contract after award of the contract.
3 Thereafter, contractor shall provide updated lists of sub-contractors performing work by
4 the contract when requested by the City's or its representatives.
- 5 (d) A requirement that all employees are paid via direct deposit or check and a record of
6 payments, with detailed withholdings, is retained.

7
8 The City shall have the right to inspect contractor's records as needed in order to confirm
9 compliance with sections 10-150-10-156 of this ordinance.

10
11 **Sec. 10-155. – Penalties for non-compliance.**

12
13 (a) Refusal by the contractor or subcontractor to comply with any portion of section 10-150 to
14 10-156 as herein stated and described may subject the offending party to any or all of the
15 following penalties:

16 (1) Withholding payments that are due to the contractor who is in violation under the
17 involved contracts until it is determined that the contractor or subcontractor is in
18 compliance with the provisions of the contract;

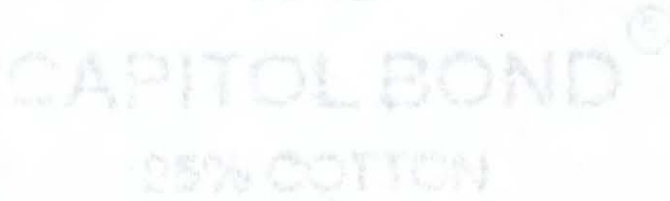
19 (2) For those contractors who violate any provision of section 10-150 to 10-156 within a
20 two year period, such contractor shall be excluded from bidding on any contracts with
21 the city or any of its departments or divisions for a period of one year from the date of
22 the second violation.

23 (b) In the event the sanctions or penalties contained in paragraph (1) or (2) of subsection (a) are
24 invoked, the following procedure shall be followed: The director of the department for which the
25 contract was awarded will notify the contractor of the facts or circumstances which formed the
26 basis for the allegation that the contractor has not complied with the provision of Sections 10-
27 150 to 10-156, and said notice shall be in writing and received at least ten days prior to any
28 action being taken by the city during which time the contractor may clarify or make corrections.

29
30 **Sec. 10-156. – Enforcement of sections 10-150 to 10-156.**

31
32 The Human Rights and Relations Director or his/her designee shall administer and enforce the
33 responsibilities of sections 10-150 to 10-156 and implement rules and procedures to effectuate
34 such sections; make all appropriate determinations as to compliance with the program; meet
35 with contracting parties for said purposes; maintain and report required contract statistics for
36 quarterly reports.

37
38 Section 2. This Ordinance shall be in full force and take effect fifteen (15) days from
39 and after the date of its passage.



INTRODUCED BY COUNCILMEMBER

Christopher Jerome

APPROVED BY:

Tom Stothart 2/25/2021
MAYOR OF THE CITY OF OMAHA DATE

PASSED FEB 23 2021 7-0

ATTEST:

Kimberly Hoising 2/25/2021
DEPUTY CITY CLERK OF THE CITY OF OMAHA DATE

APPROVED AS TO FORM:

[Signature] 2/18/21
DEPUTY CITY ATTORNEY DATE