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Public Works Updates

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Apprenticeship Utilization Requirements (AUR)

Apprenticeship Utilization Requirements (AUR)

- Stated Purpose (RCW 39.04.300):
 - Well-trained construction trades are essential for public works projects
 - Population trends indicate future inadequate supply of skilled trade workers
 - AURs help ensure a sufficient supply of skilled trade works for public works projects
- AURs first enacted in 2005 –
 - Originally applied to DOT, schools, and colleges
- Expanded to apply to municipalities effective July 1, 2024 –
 - Ports qualify

AURs – Continued

- Phased Application (RCW 39.04.320):
 - Contracts awarded after July 1, 2024, estimated to cost \$2,000,000.00 = 15% AUR for all labor hours;
 - Contracts advertised for bid on or after July 1, 2026, estimated to cost \$1,500,000.00 = 15% AUR for all labor hours; and
 - Contracts advertised for bid on or after July 1, 2028, estimated to cost \$1,000,000.00 = 15% AUR for all labor hours.
- Estimated Cost:
 - Engineer's Estimate of Cost Pre-advertisement –
 - If estimated under threshold, but awarded over threshold = AUR does not apply
 - If estimated over threshold, but awarded under threshold = AUR applies
 - Statute does not specify if tax included in estimate –
 - MRSC recommends inclusion = best course of action

AURs – Continued

- AUR Requirements must be in the specifications (RCW 39.04.310(1)(a)(ii)):
 - Optional – referencing AUR requirement in Invitation to Bid
- Calculating AUR Compliance (RCW 39.04.310) –
 - 15% of all labor hours:
 - Labor hours = total hours of workers receiving hourly wages directly employed on the project
 - Includes all Contractor and Subcontractor labor hours
 - Labor Hours excludes hours worked by foremen, superintendents, owners, and workers not subject to prevailing wages
 - 15% of all labor hours, not 15% of each trade's labor hours

AURs – Continued

- Apprentice Utilization Plan (AUP):
 - AUP is plan submitted by bidder detailing plan to meet the AURs
 - Required if bidder has a “history” of receiving monetary penalties for not achieving AURs (RCW 39.04.350(3)(e))
 - Recommended on all projects
 - Require all bidders **OR** apparent low bidder to provide within XX days of notice
 - Review and determine if AUP is reasonable and attainable
 - Department of Enterprise Services example AUP:
<https://des.wa.gov/sites/default/files/2022-06/SampleUtilizationPlanForm20200101.pdf>

AURs – Continued

- Expected Cost Value (ECV) associated with meeting AURs (RCW 39.04.320(4)(b)):
 - Port should include ECV in bid documents
 - Intended to provide estimate of costs associated with including apprentice labor –
 - Apprentices require additional supervision, which increases overall costs to perform the same work
- Monetary Incentives / Penalties for AURs (RCW 39.04.320(4)(b)):
 - Must include incentive for meeting AURs and penalty for missing AURs
 - No required incentive or penalty levels
 - Philosophical approach of your Port
 - The higher the incentive or penalty, the more expensive the project to the Port

AURs – Continued

- Port has discretion to modify 15% AURs for the following (RCW 39.04.320(2)):
 - The demonstrated lack of availability of apprentices in specific geographic areas
 - A disproportionately high ratio of material costs to labor hours, which does not make feasible the required minimum levels of apprentice participation
 - Participating contractors have demonstrated a good faith effort to comply with the requirements of this section
 - Other criteria the awarding entity deems appropriate, which are subject to review by the office of the governor or the municipality's legislative authority if the awarding entity is a municipality
 - No information on how or when may be reviewed
- Fairly open ended and broad

AURs – Continued

- Port responsible for monitoring AUR compliance (RCW 39.04.320(4)(b)):
 - Require contractor to report AURs through L&I's prevailing wage intent and affidavit portal as part of payment approval process
 - Port must report AURs to the supervisor of apprenticeship at L&I by final project acceptance
- Specifications must state that the contractor cannot be required to exceed the AUR (RCW 39.04.320(8))

Sample AUR Contract Language

ARTICLE XX APPRENTICESHIP UTILIZATION REQUIREMENTS

XX.1 Apprenticeship Requirement

In accordance with apprenticeship utilization requirements in RCW 39.04.310 – RCW 39.04.320, it is required that fifteen percent (15%) of the labor hours on this Project be performed by apprentices registered in a Washington State-approved training program. Contractor must include these requirements in all subcontracts of any tier on the Project. In no case shall the Contractor or a subcontractor be required to exceed the fifteen percent (15%) apprenticeship utilization requirement of RCW 39.04.310 – RCW 39.04.320.

XX.2 Apprentice Defined

An apprentice is a person enrolled in an apprentice training program approved by the Washington State Apprenticeship and Training Council. No worker shall be employed as an apprentice in any work classification in which the employee has successfully completed a training course leading to journeyman status or in which the employee has been employed as a journeyman.

XX.3 Calculation Methodology

Apprentice Participation shall be calculated by taking the total number of labor hours performed by prime and subcontractor apprentices divided by the total number of labor hours performed by all hourly labor at the job site, expressed as a percentage. Labor hours shall exclude hours worked by foremen, superintendents, supervisors, owners, and workers who are not subject to prevailing wage requirements. The denominator shall not include hours spent by contractor/subcontractor personnel not directly involved in the work at the job site and shall not include hours spent by personnel at the site that are not paid prevailing wages, such as owners and superintendents.

Sample AUR Contract Language

XX.4 Expected Cost Value of Compliance

The estimated expected cost value of complying with the fifteen-percent (15%) apprenticeship utilization requirement on this Project is _____ Dollars (\$_____) (the “EVC”). The EVC is not a representation, warranty, or guaranty, and Contractor shall independently determine the actual cost of complying with the fifteen-percent (15%) apprenticeship utilization requirement on this Project. Contractor shall not have any claim related to or arising out of the EVC included herein.

XX.5 Apprenticeship Utilization Plan, Compliance, and Good Faith Efforts

a. Prior to execution of this Agreement, Contractor shall submit the Contractor’s Apprentice Utilization Plan (the “AUP”) demonstrating intended compliance with this Article XX. An electronic copy of a sample AUP is available on the Owner’s website at: [insert link](#). Owner will not sign this Agreement until the AUP reasonably demonstrates compliance with the requirements of Article XX.

b. During the term of the Agreement, adjustments to the AUP and/or the apprenticeship utilization requirement may be granted subject to approval by the Owner. Contractor shall submit a written request for adjustment of the required percentage.

Sample AUR Contract Language

XX.6 Qualifying Criteria for Apprenticeship Utilization Percentage

Owner, in its discretion, may grant a Good Faith Effort waiver of the apprenticeship utilization percentage requirement if, in Owner's determination:

- a. Contractor has demonstrated that it has utilized its "best efforts" to meet the established percentage requirement but remains unable to fulfill the goal;
- b. The demonstrated lack of availability of apprentices in specific geographic areas;
- c. In order to meet the requirement, Contractor will be forced to displace members of its workforce;
- d. The reasonable and necessary requirements of the Contract render apprentice utilization infeasible at the required levels.
- e. A disproportionately high ratio of material costs to labor hours render apprentice utilization infeasible at the required levels;
- f. Documentation from original equipment manufacturers, or similar, confirming that work performed must only be completed by certified journey-level installers or risk voiding warranty, or similar; or
- g. Contractor has demonstrated that it has contacted multiple registered apprenticeship programs, yet an insufficient number of apprentices are available to meet the contract requirements.

Sample AUR Contract Language

XX.7 Reporting Requirements

- a. Contractor and every Subcontractor shall report all labor hours and wages paid as required by the Washington State Department of Labor and Industries.
- b. The Contractor shall submit the Monthly Apprentice Utilization Report electronically on a monthly basis throughout the term of the Agreement. This report shall include all labor and apprentice hours for the Contractor and all Subcontractors. Reporting shall be made through the Washington State Department of Labor and Industries required process.
- c. The Contractor's Monthly Apprentice Utilization Report for the prior month shall be due within ten (10) business days following the first (1st) of the month or shall accompany each progress payment request. (For example, Contractor's Monthly Apprentice Utilization Report for January is due ten (10) business days into February). The Contractor's Monthly Apprentice Utilization Report shall reflect all work of the same time period corresponding to any progress payment requests.
- d. A Monthly Apprentice Utilization Report shall be submitted with the final pay request documenting the final apprentice utilization for the completed Project.
- e. Failure to submit required reports as stated above may delay approval and processing of the payment request or may result in the withholding of payments as provided in RCW 39.76.011.
- f. Regardless of the number of days allowed for completion of the Project, Contractor shall monitor the apprenticeship labor hours and shall monitor compliance with the Project's established apprentice utilization participation.
- g. Contractor shall retain all records regarding apprenticeship requirements for a period of three (3) years following acceptance of the Contract work, and Contractor shall make the records available at reasonable time and places for inspection by authorized representatives of either the Contracting Agency or the Washington State Apprenticeship and Training Council.

Sample AUR Contract Language

24.8 Incentives and Penalties

In accordance with RCW 39.04.320 the Owner has set the following incentives and penalties regarding apprentice utilization:

- a. **Penalty:** A penalty of _____ Dollars (\$) for each One Million Dollars (\$1,000,000.00) of the total project amount will be assessed if the Project does not reach the fifteen-percent (15%) Apprentice Utilization requirement, and no Good Faith Effort has been approved by the Contracting Agency.
- b. **Incentive:** The Contracting Agency will provide a partial wage reimbursement for apprentice wages in the amount of _____ Dollars (\$) to the Contractor if the project reaches the fifteen-percent (15%) Apprentice Utilization requirement, and no Good Faith Effort has been approved by the Contracting Agency.



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Small Works Roster

Small Works Roster (SWR)

- Consolidated Small Works Roster limits for municipalities:
 - Old Port limit: \$300,000.00
 - New limit for all: \$350,000.00, excluding tax
- SWR Development – three (3) options (RCW 39.04.151):
 1. Statewide roster maintained by MRSC
 2. Create and maintain own roster(s)
 - Create rosters for different:
 - Specialties;
 - Categories of work; and/or
 - Geographic areas
 3. Interlocal with another agency –
 - Interlocal must specify lead agency for implementing RCW 39.04.151

SWR – Continued: Creating Rosters (RCW 39.04.151)

- Once per year:
 - Publish in newspaper and notify the Office of Minority and Women's Business Enterprises' directory of certified firms soliciting contractors
- Must add all licensed contractors requesting to be added:
 - Can request to be added any time
- Must require all contractors to verify if they are:
 - Women and minority owned business (RCW 39.19.030(7)(b));
 - Veteran owned business (RCW 43.60A.010); and/or
 - Small business (RCW 39.04.010)
- Must require all contractors to keep current records of any applicable licenses, certifications, registrations, bonding, insurance, or other appropriate matters on file with appropriate agencies
- Contractors must accept e-mail communications
- Adopt resolution implementing RCW 39.04.151

SWR – Continued: Awarding Projects

- Must establish procedures implementing RCW 39.04.151-.152 (RCW 39.04.152(1)):
 - I.e., procurement policy
- SWR Direct Negotiations:
 - Different from Port ability to directly award any public work under \$40,000.00 to any contractor per RCW 53.08.120(2)(c)
 - Allowed on projects \$150,000.00 or less, excluding tax
 - SWR direct negotiations with “small businesses” only –
 - Business meeting size, ownership, control, and personal net worth criteria adopted by Office of Minority and Women’s Business Enterprises:
 - Gross annual receipts \$30.72 M or less
 - Owner (51% or more) personal net worth \$2.047 M or less
 - Competitive solicitation not required

SWR – Continued: Awarding Projects

- SWR Direct Negotiations – Continued:
 - If six (6) or more contractors on roster (RCW 39.04.152(4)(b)(i)) –
 - Award directly to 1 contractor
 - Must rotate through contractors
 - Must utilize different contractors on different projects when available
 - If five (5) or less contractors on roster (RCW 39.04.152(4)(b)(ii)) –
 - May direct contract with any contractor
 - Must notify all small, minority, women, or veteran-owned businesses on applicable roster when utilize direct negotiation –
 - Do not have to give them all opportunity on each project
 - Cannot favor certain contractors by repeatedly awarding contracts without documented attempts to direct contract with other contractors
 - Ports shall establish a small, minority, women, and veteran-owned business utilization plan

SWR – Continued: Awarding Projects

- SWR Competitive Solicitation –
 - Utilize on projects over under \$150,000.00 if not directly negotiating with “small business” and on all projects between \$150,000.00 and \$350,000.00;
 - Invite bids by electronically notifying all bidders on applicable roster interested in working in geographic location; and
 - Must award to lowest responsive and responsible contractor
- For ALL awards –
 - Document “good faith” efforts to comply with following:
 - After award, bids must be recorded, publicly available, and available by request; and
 - Must publish a list of contracts awarded by direct negotiation annually
 - If \$5,000.00 or less, retainage or performance bonds not mandatory

QUESTIONS



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