

Davidson County Residency and Low Income Hiring Requirements

Initial October 2015 Version

Summary

- Essentially mirrors the Charter language pertaining to the 40% local hire requirement
- Does not define “construction trade workers”
- Does not provide an exemption for those agencies whose procurement does not fall under the Metro Division of Purchasing
- Does not provide an exception for emergency situation affecting public health and safety
- Uses a low income standard based on the HUD program limits at the 80% level for a family of four
- Requires contractors to provide certified payroll report of all the total construction work hours performed by Davidson County residents and low income workers, but includes no mechanism for determining compliance
- Immediate penalty provisions based on the following:
 1. First violation requires submission of a corrective plan
 2. Second violation within a year results in 6-month suspension of the contractor from being awarded contracts on future Metro projects
 3. Third violation within a year results in a 3-year debarment

Final January 2016 Version

Summary

- Designates Nashville Career Advancement Center (NCAC) as partner in finding and training Davidson County residents and low income persons to work on Metro construction projects.
- Exempts agencies whose procurement activities are not under the jurisdiction of the Metro Division of Purchases (NES, MNPS, MTA, MDHA, airport authority, sports authority, convention center authority, hospital authority)
- Defines “construction craft work” to include both skilled construction trade work and unskilled construction-related tasks
- Residency is to be determined based upon the location where the person votes, pays personal income taxes, obtains a driver’s license, or establishes utility services
- Defines “low income” to mean HUD program income limits at the 50% level (very low income) for a family of four
- Defines “total construction worker hours” to also include work performed by persons enrolled in apprenticeship programs and participating in on-the-job training programs
- Specifies the detailed information that must be provided in the monthly payroll report in an electronic format as determined by the purchasing agent. Contractors would not get paid until the report is provided. Failure to provide the report could be considered a material breach of contract.
- Includes an exception for emergency projects when there is a threat to public health, welfare or safety
- Includes a four year phased-in penalty approach. The purchasing agent can take any of the following actions:
 - Provide and implement a corrective plan of action if contractor has shown a good faith effort to comply
 - Withhold as liquidated damages from any payment otherwise due the contractor an amount equal to the average hourly wage paid by the contractor

to all Construction Craft Workers on the project multiplied by the total number of Deficient Hours. The portion withheld would be 25% during the first year after the regulation goes into effect, 50% after the second year, 75% after the third year, and 100% after the fourth and subsequent years.

- Terminate a contract for breach, in which event the contractor shall pay as damages the Metropolitan Government's costs incurred on account of such termination, including the costs of delay and re-procurement
- A three year debarment
- Includes a waiver provision. If, upon a showing of clear and convincing evidence, the purchasing agent finds that sufficient numbers of Davidson County residents with the specialized skills or training to perform some portion of the work required by a solicitation are unavailable, the purchasing agent may waive such of these regulations for a particular contract or class of employees as may be necessary to protect public health, safety or welfare. A waiver may include a reduction in the required percentage of local worker hours.

Initial Regulation Text

- A. Any person entering into any contractual agreement with the metropolitan government for any type of building or construction work wherein any funds of the metropolitan government may be appropriated or expended for such building or construction work in the amount of One Hundred Thousand Dollars (\$100,000.00) or more shall commit to the Davidson County Residency and Low Income Hiring requirements. Construction projects for the building, altering, repairing, improving or demolishing any public structure or building or other public improvements of any kind to any public real property, excluding professional services, shall require that one (1) or more residents of Davidson County perform Forty Percent (40%) of the Total Construction Work Hours worked by construction trade workers.
- B. The residency requirement applies to all prime contractors and all subcontractors in the aggregate.
- C. Additionally, it is required that a significant effort be made to include no less than Ten Percent (10%) of the Total Construction Worker Hours performed by low income residents of Davidson County. Low Income is based on HUD Program Income Limits at the 80% level (low income) for a family of 4.
- D. In determining the Total Construction Worker Hours for each project, there shall be included the number of hours worked on all customary construction activities, but shall exclude the number of hours of work on the project performed by workers who are not residents of Tennessee.
- E. The purchasing agent or the purchasing agent's designee shall receive in addition to the Certified Payroll report a summary report of all the Total Construction Worker Hours for the contractor and all subcontractors included in each pay application performed by Davidson County workers as well as those performed by Low Income Davidson County Workers. Failure to supply the purchasing agent or the purchasing agent's designee the required summary and supporting Certified Payroll with each pay application may be determined to be a material breach of contract.
- F. Penalties for Non-Compliance
 1. First occurrence in a rolling twelve-month period shall require the data be submitted along with a corrective plan for future pay roll submissions and the delay in processing pay applications pending compliance.
 2. Second occurrence in a rolling twelve-month period shall result in the suspension by the purchasing agent in future projects for a period of six (6) months.
 3. Third occurrence in a rolling twelve-month period shall result in the debarment by the purchasing agent of the contractor/subcontractor for a period of three (3) years.
- G. The purchasing agent of the metropolitan government shall include in all construction solicitations a provision to the effect that no contract shall be entered into for building and construction projects unless the successful offeror submits an affidavit to the metropolitan government stating that it will comply with the by this employment policy.

Final Regulation Text

R4.20.130 Local Hire Requirements

1. Purpose. The purpose of this regulation is to implement Amendment No. 3 to the Metropolitan Charter, approved by the voters in August 2015. Amendment No. 3 requires that one or more residents of Davidson County perform forty percent of the total construction work hours worked by construction craft workers on certain Metropolitan Government capital projects. In furtherance of this interest, the Nashville Career Advancement Center (NCAC) will provide assistance in finding and training Davidson County residents and Low Income residents for the construction of certain taxpayer-funded projects set forth herein.
2. Scope. This regulation shall apply when the Division of Purchases is procuring certain construction services for the Metropolitan Government in accordance with section 8.109 of the Charter that will require expending funds or other resources of the Metropolitan Government in the amount of \$100,000 or more on taxpayer-funded projects for the building, altering, repairing, improving or demolishing of any public structures or building or other public improvements of any kind to any real public property, but excluding professional services. This regulation shall not apply to any agency of the Metropolitan Government whose procurement activities are not under the jurisdiction of the Division of Purchases. Thus, this regulation does not apply to any agency that has independent authority under the Charter or State law to handle its own procurement. Such agencies include, but are not limited to:
 - a. Nashville Electric Power Board/NES. *See Metropolitan Charter § 8.109.*
 - b. Metropolitan Board of Public Education. *See Metropolitan Charter § 8.109; T.C.A. § 49-3-203(a)(2)*
 - c. Metropolitan Transit Authority. *See Metropolitan Charter § 11.401.*
 - d. Metropolitan Nashville Airport Authority. *See T.C.A. § 42-4-107(16).*
 - e. Metropolitan Sports Authority. *See T.C.A. § 7-67-109.*
 - f. Metropolitan Convention Center Authority. *See T.C.A. § 7-89-109.*
 - g. Metropolitan Development and Housing Agency. *See T.C.A. § 13-20-104.*
 - h. Metropolitan Hospital Authority. *See T.C.A. § 7-57-301.*
3. Definitions. For purposes of this regulation, the following words and terms shall have the meanings given herein:
 - a. "Construction Craft Work" means the performance of skilled construction trade work or unskilled construction-related tasks on a Metropolitan Government project, including skilled or unskilled construction work customarily performed on a construction site in accordance with good construction practices. If performed at a location other than the site of the project, Construction Craft Work does not include the manufacture, fabrication or assembly of construction materials or components to be incorporated into the project.
 - b. "Davidson County residents" means a person who maintains his or her personal residence or place of abode within Davidson County as determined by the location where the person votes, pays personal income taxes, obtains a driver's license or establishes utility services.
 - c. "Deficient Hours" means the difference between the number of Total Construction Worker Hours actually worked on a project by Davidson County residents and the number of Total Construction Worker Hours that must be worked by Davidson County residents in order for a contractor to meet the percentage requirements of this regulation.

- d. "Low Income" means the U.S. Department of Housing and Urban Development (HUD) Program Income Limits at the fifty percent level (very low income) for a family of four.
 - e. "Total Construction Worker Hours" means the total number of hours worked by Construction Craft Workers on all customary construction activities. Total Construction Worker Hours shall include work performed by persons enrolled in apprenticeship programs and participating in on-the-job training programs. In determining Total Construction Worker Hours, the number of hours worked on the project by workers who are not residents of Tennessee shall be excluded.
4. The requirement that forty percent of Construction Craft Work be performed by Davidson County residents applies to all prime contractors and all subcontractors in the aggregate. Additionally, in accordance with the Charter amendment referenced above, such prime contractors and subcontractors shall make a significant effort to have no less than ten percent of the Total Construction Worker Hours performed by Low Income residents of Davidson County.
 5. Contractors shall submit, along with each monthly pay application request, a Certified Payroll report. For the period covered by the pay application, the report shall specify:
 - a. Total Construction Worker Hours;
 - b. Total Construction Worker Hours worked by residents of Davidson County;
 - c. Total Construction Worker Hours worked by Low Income residents of Davidson County.

The report shall be in a standard electronic format as determined by the purchasing agent. Failure to supply the purchasing agent or the purchasing agent's designee the required summary and supporting Certified Payroll with each pay application may be determined to be a material breach of contract. For purposes of this regulation, the purchasing agent shall determine residency based upon the information provided in the Certified Payroll report.

6. Exception for emergencies. In accordance with Section 4.17.070 of the Metropolitan Code, the purchasing agent may make, or authorize others to make, emergency procurements when there exists a threat to public health, welfare or safety without ensuring compliance with the local hire requirements set forth herein.
7. The purchasing agent shall include in all construction solicitations subject to the local hire requirements a provision to the effect that no contract shall be entered into for building and construction projects unless the successful offeror submits an affidavit to the Metropolitan Government stating that it will comply with the employment requirements set forth herein.
8. A contractor's material failure to comply with these regulations may be deemed a breach of contract. Taking into consideration the severity of the failure, past failures by the contractor on the same or previous projects, the contractor's good faith efforts to comply with the regulations and the best interests of the Metropolitan Government, the purchasing agent may do one or more of the following:
 - a. require the contractor to provide and, upon approval, immediately implement a plan of correction; and
 - b. for failing to achieve the required percentage for Total Construction Worker Hours worked by Davidson County residents, withhold as liquidated damages from any payment otherwise due the contractor an amount equal to a portion of the product of: (1) the average hourly wage paid by the contractor to all Construction Craft Workers on the project and (2) the total number of Deficient Hours. Such portion shall be twenty-five percent for any project let during the first year after this regulation goes into effect, fifty percent for any project let during the second, seventy-five for any project let during the third and one hundred percent for any project let thereafter.

In addition, for persistent and material failures by any contractor to act in good faith in its efforts to comply with these regulations, the purchasing agent may:

- c. terminate a contract for breach, in which event the contractor shall pay as damages the Metropolitan Government's costs incurred on account of such termination, including the costs of delay and re-procurement; and
 - d. deem the contractor ineligible to respond to future solicitations for Metropolitan Government projects for an appropriate period not exceeding three years.
9. If, upon a showing of clear and convincing evidence, the purchasing agent finds that sufficient numbers of Davidson County residents with the specialized skills or training to perform some portion of the work required by a solicitation are unavailable, the purchasing agent may waive such of these regulations for a particular contract or class of employees as may be necessary to protect public health, safety or welfare. Such evidence may include a determination by a Metropolitan Government department or agency designated by the purchasing agent that an insufficient number of Davidson County residents or Low Income Davidson County residents are available to perform all or a portion of the work required by a solicitation. A waiver granted under this paragraph may include a reduction in the required percentage of Total Construction Worker Hours to be performed by Davidson County residents or Low Income Davidson County residents. The purchasing agent may as a condition of granting a waiver require a contractor to establish a training program or make use of a training program certified by the U.S. Department of Labor or other government entity designed to provide Davidson County residents with the specialized skills necessary to carry out similar work on future projects.