

City of New Rochelle

Resolution no.

Resolution Establishing an Economic Opportunity and Nondiscrimination Policy for the City of New Rochelle.

BE IT RESOLVED by the Council of the City of New Rochelle:

There is hereby established, an **Economic Opportunity and Nondiscrimination Policy** for the City of New Rochelle, applicable to City-awarded contracts and specified economic development projects, as follows. This Resolution replaces 1996 City Resolution no. 205, which is hereby repealed.

I. Introduction.

A. Intent.

The City of New Rochelle finds and determines that contracts awarded by the City, and economic development projects supported by the City or benefitting from zoning enhancements, provide a crucial opportunity for advancing City policy objectives, including targeting employment and business opportunities. In addition, prohibiting barriers to employment and invidious discrimination in City- supported contracts and projects is an important goal of the City in its expenditures and economic development activities.

B. Definitions.

The following terms shall have the following meanings in this Policy:

“Approved apprenticeship program” shall mean a program that is approved by the New York State Commissioner of Labor in accordance with Article 23 of the New York Labor Law and meets all of the following criteria at the time any contract is awarded by the City:

- a. The program has been in existence for an adequate length of time to have graduates, ie at least four (4) years;
- b. There are graduates of that program that have become journeymen or journeywomen and are still engaged in the trade covered by their apprenticeship program; and
- c. The instructors in the apprenticeship program are qualified journeymen in that trade or otherwise are competent to provide apprenticeship training.

d. The program issues valid Certificates of Completion which are specifically identified by the NYS Commissioner of Labor as pertaining to the trade(s) and/or job titles(s) called for within the construction contract and which is appropriate for the type and scope of work to be performed pursuant to such contract.

"City" shall mean the City of New Rochelle.

"City Contract" shall mean a contract awarded by the City of New Rochelle, or a subcontract thereunder.

"Construction Contractor" shall mean a business performing construction work, or subcontracting to another entity to perform construction work, in furtherance of a City Contract or in construction of a Public-Private Project. "Construction Contractor" includes Prime Contractors.

"Developer" shall mean a developer of a Public-Private Project.

"Employment Hiring Plan" (EHP) means a Construction Contractor or employer's detailed hiring plan (for Construction Contractors and the Policy) as described in City Manager's Targeted Hiring Guidelines

"Employer" shall mean a business employing at least five individuals to work either in fulfillment of a City Contract, or on-site within a Public-Private Project. "Employer" does not include construction contractors.

"First Source Center" shall mean a source designated by the City for prompt referral of qualified and/or trained workers to Construction Contractors and Employers, for purposes of this Policy. **The First Source Center must be able to demonstrate or document to the City that it has the requisite qualification and/or experience to fulfill the duties and responsibilities as outlined in the Policy.**

"M/WBE" shall mean a business concern that is at least 51% owned by one or more individuals who are African American, Hispanic American, Native American, Asian- Pacific American or Asian-Indian American, or female; and whose management and daily business operations are controlled by one or more of these owners.

"Opportunity Youth" shall mean New Rochelle residents between the ages of 16 and 24 who are unemployed or underemployed.

"Prime Contractor" shall mean a Construction Contractor that is party to a City Contract, or a prime contractor retained to perform construction work on a Public-Private Project.

"Public-Private Project" shall mean a development project (i) that receives financial aid, assistance, or funding from the City, including any public financing or contribution, such as loans, loan guarantees, tax credits, tax abatements, or infrastructure construction; (ii) for which the City is transferring ownership of or leasing right to occupy any real property, including

rights-of-way or street vacation, whether at or below market rate; (iii) for which the City is entering into a development agreement or similar agreement; (iv) for which a developer has opted into the Downtown Overlay Zone, **the WO-1 Overlay Zone proposed for the Downtown Waterfront Area or any subsequent overlay zones providing developers with added permitted density**; or (v) for which the City includes compliance with this Policy a term or condition of a voluntarily negotiated agreement, requested discretionary permit, or requested legislative action.

“Reporting Period” means the City Manager’s indicated reporting period for measuring the targeted hiring efforts of the Construction Contractors and Employers. These reporting periods shall be at the City Manager’s determination of 10%, 30%, 50%, 70% and 90% construction completion phases.

"Subscribing Employer" shall mean a Construction Contractor that employs an apprentice in accordance with the standards of apprenticeship through agreement with an apprenticeship program registered with the New York State Department of Labor.

"Targeted Worker" shall mean **any individual whose primary place of residence is within a Tier 1 or Tier 2 census tract and who, prior to commencing work on a Covered Project, is a qualified and/or trained worker referred to a Construction Contractor or Employer by the First Source Center, either for the currently available position, or for any position within the previous twelve months, and/or Union hiring hall.**

“Tier 1” means all census tracts in New Rochelle.

“Tier 2” means the census tracts in Westchester County where the median household income is less than 80% of the Area Median Income.

II. Employment and Training Opportunities.

A. Construction Employment.

1. Goal. The Goal of this Resolution is to have 20% of the total hours worked on City Funded projects or Public Private Projects be worked by Targeted Workers, provided that hours worked by workers residing outside the State of New York shall not be considered when computing the total hours worked on a project.

1.2. Hiring Procedures. To achieve this goal, ~~Each~~ Construction Contractor shall take the following steps in the following order, in an effort to employ Targeted Workers to perform at least 20% of the work hours on the project or contract.

~~**Step One:** Utilize the Construction Contractor's discretion to assign to perform project work to any current employees who are Targeted Workers;~~

Step One: At least 20% of total hours worked on each project shall be performed by Targeted Workers. For any hour of Project Work for which a Construction Contractor seeks to meet this 20% requirement, the Construction Contractor, Unions and the First

Source Center must first refer individuals whose primary place of residence is within a Tier 1 census tract. After Unions, Construction Contractors and the First Source Center have exhausted the available pool of Local Residents whose primary place of residence is within a Tier 1 census tract, they may refer Local Residents whose primary place of residence is within a Tier 2 census tract.

Step Two: If the Construction Contractor utilizes a union hiring hall to ~~retain~~ obtain workers, ~~such Contractor should utilize available opportunities to request the employment of Targeted Workers residing in New Rochelle, such as an explicit request to hire Targeted Workers, rehire and other similar procedures in the relevant collective bargaining agreement. utilize name call, rehire, similar procedures in the relevant collective bargaining agreement, and an explicit request to retain Targeted Workers;~~

Step Three: If the above steps have not enabled employment of Targeted Workers to perform at least 20% of the work hours on the project or contract, request referral of Targeted Workers from the First Source Center; and

Step Four: Reasonably consider workers that have been referred by the First Source Center within ~~five business days~~ 24 hours of request ~~therefor.~~therefor. If the Construction Contractor has not filled available jobs with Targeted Workers through the steps set forth above, it may recruit and hire workers through any mechanism, and shall continue to reasonably consider workers that have been referred by the First Source Center for up to fifteen days after initial notification. Employers that need to hire on an emergency basis in order to maintain operations may hire from any source immediately, but still shall notify the First Source Center about available positions, and reasonably consider any candidates referred before hiring is complete.

2-3. New Apprentice Employment Requirements for Prime Contractors.

~~For each 20,000 construction work hours performed by a Prime Contractor and its subcontractors of any tier, such Prime Contractor and its subcontractors of any tier shall act as a Subscribing Employer for at least one individual newly enrolled as an apprentice in an apprenticeship program registered with the New York State Department of Labor, and employ such new apprentice for an aggregate total of at least one thousand 1,000 hours of work on the prime contract or subcontracts.~~

a. Where New Rochelle is a Market Participant

At least 20% of total hours worked on each project shall be performed by apprentices, but the hours performed by apprentices in each individual craft shall not exceed the ratio to journey person established by the applicable craft union's State- approved apprenticeship standards. A minimum of 50% of all apprentice hours shall be performed by Targeted Workers.

b. Where New Rochelle is Not a Market Participant

Every Contractor should maintain a goal of (i) having at least 20% of total hours worked on each project be performed by apprentices, but the hours performed by apprentices in each individual craft shall not exceed the ratio to journeyperson established by the applicable craft union's State-approved apprenticeship standards and (ii) having a minimum of 50% of all apprentice hours be performed by Targeted Workers.

B. Non-construction Employment.

Each Employer shall undertake the following steps in the following order, in an effort to hire Targeted Workers to fill at least 25% of available jobs on the project or contract.

Step One: Notification of Job Opportunities. When an Employer has an opening for an on-site job available, the Employer shall notify the First Source Center of the job opening and provide a description of job responsibilities and qualifications. Job qualifications shall be limited to qualifications directly related to performance of job duties.

Step Two: Consideration of Targeted Workers. The Employer shall then use standard hiring practices, including interviews, to consider all Targeted Workers referred by the First Source Center and meet the qualifications described in the referral request during a five-day period after initial notification, or until all open on-site jobs are filled, whichever is sooner. The Employer shall make good faith efforts to fill all available on-site jobs with Targeted Workers. If at the conclusion of the five-day period the Employer has been unable to fill all openings for on-site jobs with Targeted Workers, the Employer may use other recruitment methods. Employers that need to hire on an emergency basis in order to maintain operations may hire from any source immediately, but still shall notify the First Source Center about available positions, and reasonably consider any candidates referred before hiring is complete.

C. Hiring Discretion.

Nothing in this Policy requires that any Construction Contractor or Employer hire any particular individual: each Construction Contractor shall have the sole discretion to judge the qualification of and to hire or decline to hire any individual referred by the First Source Center or any other source. In order to improve the First Source system and the City's job training pipeline, each Employer that declines to hire all First Source referrals for an available position shall provide to the First Source Center a written account of reasons for rejecting such candidates.

D. First Source Center.

1. Criteria for Selecting a First Source Center:

The First Source Center plays an integral part in the success of its partners in obtaining the targeted hiring percentages. It is the responsibility of the City to designate a First Source Center possessing, but not limited to, the following demonstrable experience and qualifications:

- a. Developing, creating, designing and marketing specific programs targeting Local Residents for construction opportunities at the Covered Project (e.g. handouts and fliers for “walk-ins” demonstrating program entrance procedures).
- b. Coordinating services for contractors to assist in their local worker and apprentice utilization.
- c. Conducting orientations, job fairs and community outreach meetings to the local community.
- d. Providing supportive services such as skills training, child care, transportation, education remediation, assistance with union fees and tools.
- e. Screening and certifying the local status of workers.
- f. Establishing a referral and retention tracking mechanism for placed local workers and apprentices.
- g. Networking with the various community and faith based organizations and other non-profit entities that provide qualified local workers and/or disadvantaged workers.
- h. Liaising with the various building trades crafts for referral and placement of local hire and/or disadvantaged workers.

2. ~~Role~~First Source Center Roles and Responsibilities.:

The City shall designate a First Source Center, which shall refer qualified and/or trained workers to employers pursuant to this Policy. The First Source Center shall coordinate referrals from multiple sources in and around New Rochelle. The First Source Center shall:

- a. Coordinate the local hire referral process with the employers, Unions, Faith and Community Based Organizations, and other organizations that can provide qualified local hire referrals.
- b. Certify the Targeted Worker’s status.
- c. Maintain a database of pre-qualified Local Residents for referral to work on a Covered Project and/or indentureship into a bona fide Labor/Management apprenticeship program.
- d. Facilitate relationships among approved apprenticeship programs and the employers to enable prompt referral.
- e. Be the point of contact to provide information about available job opportunities on Covered Projects.

f. Assist the employers with their local hire effort documentations and other reports as it relates to their Local Resident and/or Targeted Worker targeted hiring requirements.

g. Work closely with City staff, the building trades and employers in achieving the targeted hiring.

~~1. Referrals of workers to employers under this policy shall include available information on candidates, including background, qualifications, contact information, relevant training or skills, and resumes and references.~~

3. 2-Outreach and Recruitment. The First Source Center shall concentrate outreach and recruitment on New Rochelle residents, and shall coordinate with referral and workforce development sources serving New Rochelle residents.

3.4. Prioritization of Opportunity Youth. In making referrals to employers, the First Source Center shall prioritize referrals of Opportunity Youth, where such candidates meet employer qualifications.

III. Business Opportunities.

Prior to the issuance of a building permit for such projects, the applicant shall demonstrate that any general contractor, contractor or subcontractor for such project, must have apprenticeship agreements for the type and scope of work to be performed with an Approved apprenticeship program as defined in Section I of this Resolution.

A. Construction Contracts.

~~1.~~ **Prime Contracting.** The City and each Developer shall have a goal of awarding at least 10% of prime contracts for construction work, including trucking services, to businesses based in the City. The City and the Developer shall make affirmative efforts to provide outreach to M/WBEs, including notification of bidding opportunities to a list of sources provided by the City, responsive communications with M/WBEs that express interest in bidding, and full and fair considerations of bids submitted by M/WBEs.

~~2.~~ **Subcontracting.** Each Prime Contractor shall have a goal of awarding at least 20% of the dollar value of subcontracts for construction work, including trucking services, to businesses based in the City. Each Prime Contractor shall make affirmative efforts to provide outreach to M/WBEs, including notification of bidding opportunities to a list of sources provided by the City, responsive communications with M/WBEs that express interest in bidding, and full and fair considerations of bids submitted by M/WBEs.

~~3.~~ Contracts and sub-contracts for construction shall include the requirement to submit quarterly utilization reports in a form provided by the City indicating the number and percentage of Targeted Workers and M/WBEs employed at a job site, with certified payroll sheets listing employees' bi-weekly payroll.

B. Service Contracts.

The City, each Developer, Employers, and management entities operating portions of Public-Private Projects shall have a goal of awarding at least 20% of the dollar value of service contracts (not including construction contracts) to be performed on-site at the project to businesses based in the City. Entities awarding service contracts shall make affirmative efforts to provide outreach to M/WBEs, including notification of bidding opportunities to a list of sources provided by the City, responsive communications with M/WBEs that express interest in bidding, and full and fair considerations of bids submitted by M/WBEs,

1. ——— Service contracts shall include the requirement to submit quarterly utilization reports in a form provided by the City indicating the number and percentage of Targeted Workers and M/WBEs employed on Public-Private Projects, with certified payroll sheets listing employees' bi-weekly payroll.

IV. Implementation.

A. Application.

This Policy applies to and shall be incorporated into all City Contracts and into contracts between the City and Developers related to Public-Private Projects. When parties referenced in this Policy engage subcontractors, tenants, and other parties to operate in Public-Private Projects or as participants in fulfillment of City Contracts, this Policy shall be incorporated by reference into relevant contracts as a material term, enforceable by the City as a third-party beneficiary.

~~**B. ——— Monitoring.** All parties with responsibilities under this Policy agree to provide information requested by the City as necessary to determine compliance with this Policy. Developers, Prime Contractors, and Employers shall provide annual public reports regarding compliance with this Policy. The City shall make available to the public in electronic format all such reports.~~

~~**C. ——— Enforcement.** Developers, Construction Contractors, and Employers are subject to liquidated damages in cases of noncompliance with this Policy. The City Manager shall release a schedule of liquidated damages pertaining to particular violations of this Policy. When this Policy is included as a term of a contract, it incorporates by reference the most recently released version of the liquidated damages schedule, and any other Policy clarifications released by the City. Liquidated damages shall be assessed by the City only in cases of sustained, material noncompliance, and after notice and opportunity to correct. Developers, Construction Contractors, and Employers also agree to remedies of specific performance and other contractual or equitable remedies related to compliance with this Policy. The liquidated damages schedule shall contain procedures relating to notice and opportunity to cure, and an appeals process in cases of assessment of liquidated damages. The City Manager may revise the liquidated damages schedule and other Policy clarifications over time, in light of implementation experience, with the goal of fostering successful implementation of this Policy without an adversarial or punitive approach.~~

B. City Manager Responsibilities:

- (a) monitor and enforce the targeted hiring measures of the Policy and issue Notices of Non-Compliance where appropriate.
- (b) Review, approve or disapprove submitted Employment Hiring Plans prior to a Construction Contractor or employer's estimated start of work. Approval of a Construction Contractor or employer to work on a Covered Project is contingent on the Construction Contractor or employer's submittal of an approved EHP. (c) Work with Construction Contractor and employer to post local hire status reports on the City Manager's website for Covered Projects.
- (d) Inform the City Council on a quarterly basis regarding the status of all Covered Projects.
- (e) Determine any withholding from payments as disputed funds and make recommendations for assessment of Liquidated Damages.

C. Construction Contractor Responsibilities:

- (a) Employment Hiring Plan (EHP): Prime Contractor shall ensure that its subcontractors of any tier, at least 20 business days prior to starting their work on the Covered Project, shall submit their plan(s) to the City Manager for approval. Each Construction Contractor shall include in its EHP a description of how it will meet the targeted hiring requirements set forth in the Policy. No Construction Contractor (of any tier) shall be approved to work on a Covered Project without an approved EHP.
- (b) Construction Contractor shall ensure that its subcontractors (of any tier), prior to start of work, (i) read and understand the requirements of the Policy; (ii) submit their Employment Hiring Plans at least 20 business days prior to their subcontractors' start of work.

D. Liquidated Damages:

Due to the difficulty of estimation of damages for violation(s) of requirements of this Policy, covered projects shall have provisions establishing liquidated damage to be assessed as follows:

- (a) Prime Contractor shall pay liquidated damages equal to the average journey person project wage for each hour the Project fell short of the targeted hiring, or \$500 per day, whichever is greater.
- (b) If the Covered Project's targeted hiring requirements are out of compliance during any Reporting Period, the Prime Contractor shall meet with the City or their designated representative to develop a recovery plan for compliance. The Prime Contractor has until the next Reporting Period to effectuate the recovery compliance plan or Liquidated Damages shall be withheld.

(c) Before Liquidated Damages are sought, the Prime Contractor shall be notified of the proposed Liquidated Damages and served with a summary of the information upon which the Liquidated Damages are based.

(d) Liquidated Damages shall be withheld from all subsequent monthly progress payment request(s) as disputed funds until such time as Prime Contractor is found to be in compliance, the Covered Project contract is terminated, or the Covered Project is completed.

(e) Should the Covered Project be terminated or completed before the Prime Contractor is found to be in compliance, recommendation shall be made to the Board to assess Liquidated Damages and the amount of the Liquidated Damages shall be returned to the fund from whence they came.

E. Recordkeeping.

Each Construction Contractor shall keep, or cause to be kept, for a period of four years from the date of substantial completion of Project Work on a Covered Project, certified payroll and basic records, including time cards, tax forms, and superintendent and foreman daily logs, for all workers within each trade performing work on the Covered Project. Such records shall include the name, address and social security number of each worker who worked on the Covered Project, his or her classification, a general description of the work each worker performed each day, the Apprentice or journey-level status of each worker, daily and weekly number of hours worked, the self-identified race, gender, and ethnicity of each worker, whether or not the worker was a Targeted Worker, and the referral source or method through which the Construction Contractor or Subcontractor hired or retained that worker for work on the Covered Project (e.g., name call, union hiring hall, First Source Center, or recruitment or hiring method). Construction Contractors and Subcontractors may verify that a worker is a Targeted Worker through a government-issued identification. City Manager may require additional records to be kept with regard to Construction Contractor or Subcontractor compliance with this Policy. All records described in this section shall at all times be open to inspection and examination by the duly authorized officers and agents of the City, including representatives of the City Manager.

F. Reporting.

The City Manager shall establish reporting procedures for Construction Contractors and Subcontractors to submit to City Manager the records described above, for purposes of monitoring compliance with and effectiveness of this Policy and monitoring operation of the City's public construction sector for other valid purposes. All records submitted by Construction Contractor or Subcontractor shall be accompanied by a statement of compliance signed by an authorized representative of Construction Contractor or Subcontractor indicating that the records are correct and complete.

G. Monitoring.

From time to time and in its sole discretion, City Manager may investigate compliance of Construction Contractor and Subcontractors working on Covered Projects with requirements of this Policy. City Manager and Awarding Departments shall have the right to engage in random inspections of job sites, subject to construction schedule and safety concerns. Each Construction Contractor and Subcontractor shall allow representatives of City Manager and the Awarding Department, in the performance of their duties, to engage in random inspections of job sites and to have access to the employees of the Construction Contractor and Subcontractor and the records required to be kept by this Policy. The City Manager shall establish an administrative procedure for City Manager monitoring of compliance with this Policy and to address allegations of noncompliance. The City Manager shall have sole authority over the administration of this procedure. Except as prohibited by law, City Manager will make data collected under this Policy available on-line to the public in real-time and create a process for members of the public to submit complaints regarding alleged violations of this Policy. The City Manager shall investigate all complaints filed by members of the public; the scope, methods, and conclusions of all such complaint-driven investigations shall be within the discretion of City Manager, with no right of the complaining party to determine the scope or methods of the investigation. All Construction Contractors, Subcontractors, and Awarding Departments shall cooperate fully with City Manager in monitoring and compliance activities. City Manager may interview, either at the worksite or elsewhere, any witness who may have information related to a complaint.

H. Severability.

If any provision of this Policy or any application thereof to any person or circumstances is held invalid by final judgment of any court of competent jurisdiction, such invalidity shall not affect other provisions or application of this Policy, which can be given effect without the invalid provision or application, and to this end the provisions of this Policy are declared to be severable.

V. Nondiscrimination Policy.

The City and each Construction Contractor, Employer, and Developer shall refrain from discrimination or harassment based on race, ethnicity, national origin, gender, sexual orientation, age, religion, disability, veteran status, or any other basis prohibited by law, in all activities in furtherance of or on site of work performed in relation to a City Contract or a Public-Private Project. Such entities shall take active steps to ensure that all activities related to City Contracts and Public- Private Projects are conducted without discrimination or harassment on these bases, by all employees and representatives.