

**ADDENDUM TO THE
CITY OF AKRON
AKRON ENGINEERING BUREAU
CONSTRUCTION AND MATERIAL SPECIFICATIONS
2008 EDITION**

111 LOCAL HIRING AND WORKFORCE PARTICIPATION POLICY

The following section is a supplement to CMS General Provisions Section 100.

111.01 Summary. This Document contains the requirements of the City of Akron's Local Hiring and Workforce Participation Policy ("Policy"). The Provisions of the Policy are hereby incorporated as a material term of this Contract. CONTRACTOR agrees that (i) CONTRACTOR shall comply with all applicable requirements of the Policy, (ii) the provisions of the Policy are reasonable and achievable by CONTRACTOR and its Subcontractors, and (iii) CONTRACTOR has had a full and fair opportunity to review and understand the terms of the Policy.

111.02 Definitions.

Apprentice. Any worker who is indentured in a bona fide apprenticeship training program registered with, and subject to regulation by, the U.S. Department of Labor and the Ohio State Apprenticeship Council.

Covered Project. A public work or improvement with estimated cost in excess of \$100,000.

Non-covered Project. Any construction projects that are not Covered Projects.

Local Resident. An individual who is a resident, as defined by Chapter 99 of the Code of Ordinances of the City of Akron at least seven days prior to commencing work on the project.

Project Work Hours. The total work hours worked on a construction contract by all apprentices and journey-level workers, whether those workers are employed by the CONTRACTOR or any Subcontractor.

111.03 Local Hiring and Workforce Participation Requirements.

Total Project Work Hours by Trade. For all contracts for Covered Projects the mandatory participation level in terms of Project Work Hours to be performed by Local Residents by trade is 50%¹:

CONTRACTOR shall submit its Local Workforce Hiring Projection by including Form 1 with its bid documents.

Local Hiring Plan. For Covered Projects estimated to cost more than \$500,000, CONTRACTOR shall prepare and submit to the City for approval a Local Hiring Plan for the Project using Form 2. The approved Local Hiring Plan will be incorporated into this Contract as a Contract Document, and will serve as the basis for determining CONTRACTOR's and its Subcontractors' compliance with local hiring requirements.

¹ In order to comply with federal legal requirements, Project Work Hours performed by residents of states other than Ohio cannot be considered in calculation of the number of Project Work Hours to which the local hiring requirements apply. CONTRACTORS and Subcontractors shall report to the City the number of Project Work Hours performed by residents of states other than Ohio.

The City will not issue a Notice to Proceed (NTP) until CONTRACTOR submits the Local Hiring Plan. CONTRACTOR shall be fully responsible for any delays in issuing the NTP and associated damages incurred by the City caused by CONTRACTOR's failure to timely submit a Local Hiring Plan.

The Local Hiring Plan must be reviewed and approved in writing by the City before any Application for Payment can be approved and progress payment paid to CONTRACTOR.

Refer to Form 2 for more information regarding the Local Hiring Plan.

Pre-construction or other Local Hire Meeting. Prior to commencement of construction on Covered Projects subject to the Local Hiring Plan requirement summarized above, CONTRACTOR and its Subcontractors identified in the Local Hiring Plan as contributing toward the mandatory local hiring requirement shall attend a preconstruction or other Local Hire meeting convened by City staff. Representatives from CONTRACTOR and the Subcontractors who attend the pre-construction or other Local Hire meeting must have hiring authority.

Bid Credit. In determining the lowest and best responsible bid, a bidder shall receive a bid credit for determination of the lowest bid equal to (a) the number of Project Work Hours to be performed by Local Residents that exceeds the mandatory participation level multiplied by (b) \$20. The bidder must include, with its bid, a request to receive this bid credit, along with a detailed Local Hiring Plan that will allow the City to evaluate the request. In addition, the bidder will provide any additional information that the City deems necessary to evaluate the request. The total bid credit shall not exceed the lesser of (1) 2.5% of the bid; or (2) \$250,000 for projects estimated by the City to cost less than or equal to \$25,000,000 or \$500,000 for projects estimated by the City to cost more than \$25,000,000.

If a bidder is determined to be the low bidder based on obtaining the bid credit and subsequently awarded the Contract as the lowest and best responsible bidder, the City shall retain an amount from the Contract Sum to assist with enforcement of this Local Hiring Policy. In addition to any retainage provided for elsewhere in the Contract Documents, the City shall retain the difference between the lowest bid, after application of the bid credit, and the next highest bid. If the bidder fails to meet the requirements of its Local Hiring Plan, then, in addition to the other penalties provided for in the Local Hiring Policy the bidder will forfeit the amount retained under this provision. No waivers granted under Article 16 Section 4 may be used to determine compliance with a Local Hiring Plan submitted to obtain a bid credit.

The Policy does not limit CONTRACTOR's or its Subcontractors' ability to assess qualifications of prospective workers, and to make final hiring and retention decisions. No provision of the Policy shall be interpreted so as to require a CONTRACTOR or Subcontractor to employ a worker not qualified for the position in question, or to employ any particular worker.

On a monthly basis, CONTRACTOR will provide to the City along with its application for payment a list of local subcontractors employed and the amounts of those local subcontractor contracts and well as a list of any local vendors or suppliers and the amounts of those contracts.

In accordance with Section 99.09 of the Code of Ordinances of the City of Akron, CONTRACTOR will provide to the City's Income Tax Division with a list of its subcontractor's names, addresses, social security or federal identification numbers, and a listing of the services that each subcontractor will perform prior to commencing Work.

Nothing in this Local Hiring Policy shall be construed to permit or require CONTRACTOR to prefer or discriminate on the basis of membership in a protected class.

Under no conditions shall a Local Resident hired under this Local Hiring Policy be considered an employee of the City of Akron.

CONTRACTOR is required by this Policy to use good faith efforts to employ minorities and females to supply services in connection with the Project and to otherwise achieve the goals of this Policy.

111.04 Conditional Waiver from Local Hiring Requirements. If, subject to verification by the City, CONTRACTOR or a Subcontractor has complied with the requirements of the Policy and a Local Resident is not available, thus demonstrating the high impracticality of complying with the applicable local hiring requirement, CONTRACTOR or the Subcontractor may request the following compliance mechanisms to receive a conditional waiver from the City, in its sole discretion, from the local hiring requirements on a project-specific basis:

Credit for Hiring on Non-Covered Projects: CONTRACTOR and its Subcontractors may accumulate credit hours for hiring Local Residents on Non-Covered Projects within the City that have been completed within the last 12 months and apply those credit hours to contracts for Covered Projects to meet the mandatory local hiring requirement. CONTRACTOR must submit documentation satisfactory to the City, in its sole discretion of its hiring of Local Residents on Non-Covered Projects. For hours performed by Local Residents on Non-Covered Projects, the hours shall be credited toward the local hiring requirement for this Contract provided that:

1. the Local Residents are paid the prevailing wages for work on the Non-Covered Projects; and
2. for Non-Covered Projects located in the City, the number of hours to be credited is the number of hours worked by Local Residents on Non-Covered Projects that exceeds the effective Local Hiring requirement if the Non-Covered Project had been a Covered Project.

Sponsoring Apprentices: CONTRACTOR or a Subcontractor may agree to sponsor a specified number of Local Residents as new Apprentices in trades in which noncompliance is likely and retain those Apprentices for the period of CONTRACTOR's or a Subcontractor's work on the Project. The City will verify that the new Apprentices are registered and Active apprentices.

111.05 Local Hiring Forms. CONTRACTOR shall submit the following forms, as applicable, to the City within 15 calendar days of Notice of Award:

1. Form 2: Local Hiring Plan — to be completed by CONTRACTOR if the estimated cost of the Project exceeds \$500,000. Refer to Article 16 Section 1.03 for Local Hiring Plan requirements. If CONTRACTOR elects to request a bid credit under Article 16 Section 1.03(E) the Local Hiring Plan form must be submitted along with the Bid. The City will not issue the Notice to Proceed until CONTRACTOR completes and submits a Local Hiring Plan form.
2. Form 3: Conditional Waivers — to be completed by CONTRACTOR in the event that CONTRACTOR or a Subcontractor believes the local hiring requirements cannot be met. Refer to Article 16 Section 1.04.

111.06 Enforcement, Record Keeping, Noncompliance, and Penalties.

Subcontractor Compliance. CONTRACTOR shall ensure that Subcontractors of all tiers comply with applicable requirements of the Policy. CONTRACTOR shall submit certified payrolls to the City.

Record Keeping. CONTRACTOR and each Subcontractor shall keep, or cause to be kept, for a period of four years from the date of Substantial Completion, 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 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 local resident, copies of the items used to verify residency, and the referral source or method through which the CONTRACTOR or Subcontractor hired or retained that worker for work on the covered project.

CONTRACTOR and Subcontractors may verify that a worker is a Local Resident by following obtaining two forms of identification, including, but not limited to a utility bill, rental agreement, driver's license, State of Ohio Identification Card, receipt of property tax or voter registration card. The City may ask for additional information and documentation showing residence.

All records described in this subsection shall at all times be open to inspection and examination by the duly authorized officers and agents of the City.

Monitoring. The City may, in its sole discretion, monitor and investigate compliance of CONTRACTOR working on the Project with requirements of this Policy. CONTRACTOR and all Subcontractors shall allow representatives of the City, in the performance of their duties, to engage in random inspections of the Site at such times as the City desires in its sole discretion. During such inspections, CONTRACTOR and all Subcontractors shall also allow representatives of the City to have access to employees of CONTRACTOR and Subcontractors and the records required to be maintained under the Policy.

Noncompliance and Damages. Failure to follow the requirements of this Local Hiring Policy will cause damage to the City, including undermining the employment rates and economic condition of the City. Good faith efforts on the part of CONTRACTOR or Subcontractor to provide employment to Local Residents will be considered by the City prior to assessing damages for non-compliance with this Local Hiring Policy. However, it is not the intent of the City to permit good faith efforts to comply with this Policy to be a basis for avoiding the actual, verified achievement of the requirements contained in the Local Hiring Policy. As such, the City has the right to seek, for violations of this Policy, all of the consequences imposed by or described in this Policy, the Contract or by law, including, but not limited to, the authority to assess damages as described below.

Any CONTRACTOR or Subcontractor who fails to satisfy the local hiring requirements of this Policy applicable to Project Work Hours performed by Local Residents (including the failure to meet the requirements contained in a Local Hiring Plan proposed by CONTRACTOR to receive the bid credit described above) shall forfeit, and in the case of any Subcontractor so failing, the CONTRACTOR and Subcontractor shall jointly and severally forfeit, to the City an amount equal to the journeyman or apprentice prevailing wage, as applicable, for the primary trade used by the CONTRACTOR or Subcontractor on the Project for each hour by which the Contractor or Subcontractor fell short of the local hiring requirement (including the failure to meet the requirements contained in a Local Hiring Plan proposed by CONTRACTOR to receive the bid credit described above).

It is the duty of the City when certifying any Application for Payment to deduct any damages due to a violation of this Policy prior to issuing a Certificate of Payment. Deductions will only be made following an investigation by the City and notice to the Contractor or subcontractor identifying the grounds for forfeiture. The Contractor or Subcontractor may follow the procedure outlined in Article 2. Claims if it disagrees with the determination. Damages may be deducted from any Progress Payment, the Sub-Final Payment, the Final Payment, or the additional retainage, if any, held by the City in accordance with Article 16 Section 1.03(E).

The assessment of damages shall not preclude the City from exercising any other rights or remedies to which it is entitled. In addition, the City may use failure to meet this Policy in determining if a CONTRACTOR or Subcontractor is the lowest and best responsible bidder in any future City projects.

END OF SECTION