ARTICLE XI. WORKFORCE DEVELOPMENT REQUIREMENTS IN CITY CONSTRUCTION CONTRACTS AND WORK ORDERS

Sec. 28-320. Purpose and scope.

The Denver Construction Careers Program (DCCP) of the Denver Economic Development and Opportunity (DEDO) or its successor agency shall be responsible for the performance of the functions, powers, and duties assigned it by this article XI as well as those assigned by the executive director of DEDO. The DCCP's purpose shall include the development of policies, rules, and regulations to increase the availability of a skilled construction workforce by increasing the availability of apprenticeships and other approved training programs and requiring the utilization of workers living in economically disadvantaged areas and workers experiencing economic disadvantage on large city construction projects.

(Ord. No. 387-23, § 2, 5-1-23)

Sec. 28-321. Powers and duties.

(a) DEDO, through the DCCP, in cooperation with contracting city agencies, is authorized to develop and implement programs to provide outreach to and to facilitate the participation of workers living in economically disadvantaged areas or experiencing economic disadvantage and to undertake efforts to increase the availability of a skilled construction labor workforce.

(b) DEDO, through the DCCP, shall perform all tasks and responsibilities necessary and proper to enforce and carry out the provisions and purposes of this article XI.

(c) The administration of this article is hereby vested in the executive director. The executive director may delegate the administration of this article, or the promulgation of any associated rules and regulations, subject to the limitations of the charter and this Code, to designated and duly qualified deputies and employees of DEDO.

(Ord. No. 387-23, § 2, 5-1-23)

Sec. 28-322. Definitions.

As used in this article XI, the following words and phrases shall have the following meaning, unless otherwise clearly required by the context.

(1) *Apprentice* means a person enrolled in a registered apprenticeship program.

(2) *Construction* means those areas of construction, reconstruction and remodeling as encompassed within the city's contracting processes authorized by the charter and ordinances of the city.

(3) *Construction contract* means any contract the city enters into with a contractor for construction work.

(4) *Contracting agency* means the agency identified in a construction or on-call construction contract as being responsible for authorizing and approving work performed under the agreement.

(5) *DCCP Approved Pre-Apprentice Program* means a training program approved pursuant to DCCP rules.

(6) *Executive director* means the executive director of DEDO, unless another agency is specified.

(7) *First-year apprentice* means an individual enrolled in a registered apprenticeship program who has completed less than the maximum number of hours designated for on the job training and related technical instruction for a first-year apprentice based on the apprenticeship standards for the registered apprenticeship program.

(8) *Horizontal construction* means construction that is predominately horizontal in nature as determined by DCCP, in consultation with the contracting agency, pursuant to DCCP rules, including without limitation, demolition, excavation, site preparation, utility, sewer and wastewater work, road, curb and gutter, sidewalk, bridge and tunnel construction, paving and concrete work, runway construction, taxiway construction, drainage and flood control work and landscaping work.

(9) *Registered Apprenticeship Program* means a construction related apprenticeship program registered with and in compliance with the requirements of the Colorado State Apprenticeship Agency or the United States Department of Labor or their successors.

(10) *Target category* or *target categories* are: people living in priority areas of economic need within Denver as identified pursuant to DCCP rules, graduates of DCCP approved pre-apprenticeship programs, and veterans.

(11) *Total construction hours* means the total of all hours worked by every worker, mechanic, or other laborer employed by a contractor or its subcontractors in the work of construction, alteration, improvement, maintenance, or demolition as documented in the city's prevailing wage and workforce compliance management solution, LCPtracker or its successor (LCPtracker). Total construction hours excludes the number of hours worked by non-Colorado residents. Residency shall be determined by the address shown in LCPtracker.

(12) *Vertical construction* means the construction of any building, structure, or other improvement that is predominantly vertical, as determined by DCCP, in consultation with the contracting agency, pursuant to DCCP rules, including without limitation, a building, structure, or improvement for the support, shelter, or enclosure of persons, animals, chattels, or movable property of any kind, and any improvement appurtenant thereto.

(13) *Veteran* means any person who has served any amount of time in any branch of the United States Armed Forces.

(14) *Work order* means the authorization to perform construction work pursuant to an on-call construction contract, integrated construction contract, or other similar form of construction contract where the specific work to be performed and the price is not established in the underlying contract.

(Ord. No. 387-23, § 2, 5-1-23)

Sec. 28-323. Covered construction contracts and work orders.

Covered construction contracts and work orders shall include the following:

(a) *Presumptively covered.* If the contracting agency's estimate of the cost of construction work to be completed pursuant to a construction contract or work order, or the contractor's bid or proposal includes ten million dollars ($10,000,000.00) or more of construction work the contract or work order is a presumptively covered construction contract or work order.

(b) *Discretionary.* The executive director of a contracting agency may, in consultation with DEDO's DCCP, apply the requirements of this article to a construction contract or work order that is not presumptively covered if doing so is in the city's best interest and furthers the purposes of this article.

This decision shall be made before the construction contract is advertised or before pricing for the work order is requested. The contracting agency shall notify contractors of this decision in procurement or pricing request documents.

(Ord. No. 387-23, § 2, 5-1-23)

Sec. 28-324 Excluded construction contracts and work orders.

The following construction contracts or work orders shall be excluded from the definition of a covered contract or work order and the requirements of this article XI with the exception of the requirements of 28-326(b) required by 28-324(c) and (d):

(a) *Emergency contracts and work orders.* Contracts or work orders where the executive director of the contracting agency determines that the work is required because of an emergency.

(b) *Paving contracts and work orders.* A construction contract or work order where the work to be performed consists predominately of paving as determined by DCCP, in consultation with the contracting agency, pursuant to DCCP rules. Paving contracts and work orders include without limitation, contracts for paving, milling, repaving, installation, replacement, repair or rehabilitation of asphalt or concrete on streets, alleys, parking lots, curbs, curb cuts, curb ramps, driveways, gutters, minor drainage structures, runways, taxiways, deicing pads or airfields or similar work listed in the roadway and paving and concrete airfield paving categories of the Rules for Prequalification or their successor categories. Paving contracts and work orders include associated or incidental work including minor excavation, base course preparation and surface preparation work.

(c) *Contrary to law or agreement.* Construction contracts and work orders where the application of any requirement of this article XI is prohibited by an applicable agreement, grant, law, guidance, requirement, or determination, of a governmental or other entity that is either providing funding or has oversight authority over the work, contracting agency, or facility where the work will be performed. Construction contracts and work orders excluded under this subsection (c) shall be subject to the requirements of section 28-326(b).

(d) *Subject to state or federal workforce development programs.* Construction contracts and work orders that require compliance with a state or federal workforce development or training program. Construction contracts and work orders excluded under this subsection (d) are subject to the requirements of section 28-326(b).

(Ord. No. 387-23, § 2, 5-1-23)

Sec. 28-325. Apprentice and target hire utilization requirements.

(a) *Apprentice utilization requirements—Vertical construction.* The following requirements shall apply to covered construction contracts and work orders for vertical construction:

(1) *Vertical construction apprentice requirement.* A minimum of fifteen percent (15%) of the total construction hours worked on covered construction contracts and work orders shall be performed by apprentices.

(2) *Vertical construction first-year apprentice requirement.* A minimum of three and seventy-five hundredths percent (3.75%) of the total construction hours worked on covered construction contracts and work orders shall be performed by first-year apprentices. For purposes of meeting the first-year apprentice requirement only, every hour worked by a first-year apprentice who graduated from a DCCP approved pre-apprentice program shall count for one and one-half (1.5) hours.

(3) *Vertical construction target apprentice requirement.* A minimum of three and seventy-five hundredths percent (3.75%) of the total construction hours worked on covered construction contracts and work orders shall be performed by apprentices who belong to one (1) or more target categories.

(b) *Apprentice utilization requirements—Horizontal construction.* The following requirements shall apply to covered construction contracts and work orders for horizontal construction. The requirements shall be based on the date the construction contract is advertised or work order is issued, and the requirements shall not change during the life of the construction contract or work order:

(1) *Horizontal construction apprentice requirement—Year 1.* A minimum of three percent (3%) of the total construction hours worked on covered construction contracts and work orders during the first year that this article XI is effective shall be performed by apprentices.

(2) *Horizontal construction apprentice requirement—Year 2.* A minimum of four percent (4%) of the total construction hours worked on covered construction contracts and work orders during the second year that this article XI is effective shall be performed by apprentices.

(3) *Horizontal construction apprentice requirement—Year 3 and subsequent years.* A minimum of five percent (5%) of the total construction hours worked on covered construction contracts and work orders during the third and subsequent years that this article XI is effective shall be performed by apprentices.

(c) *Target hire utilization requirements.* The following requirements shall apply to covered construction contracts and work orders for vertical and horizontal construction. The requirements shall be based on the date the construction contract is advertised or work order is issued, and the requirements shall not change during the life of the construction contract or work order:

(1) *Target hire requirement—Year 1.* A minimum of fifteen percent (15%) of the total construction hours worked on covered construction contracts and work orders during the first year that this article XI is effective shall be performed by individuals who belong to one or more target categories.

(2) *Target hire requirement—Year 2.* A minimum of seventeen percent (17%) of the total construction hours worked on covered construction contracts and work orders during the second year that this article XI is effective shall be performed by individuals who belong to one (1) or more target categories.

(3) *Target hire requirement—Year 3 and subsequent years.* A minimum of twenty percent (20%) of the total construction hours worked on covered construction contracts and work orders during the third and subsequent years that this article XI is effective shall be performed by individuals who belong to one (1) or more target categories.

(d) *Tabulation of hours worked.* Hours worked by an individual shall be counted in each applicable category.

(Ord. No. 387-23, § 2, 5-1-23)

Sec. 28-326. Additional requirements.

(a) *Additional requirements—Covered contracts and work orders.* Covered construction contracts and work orders are subject to the following additional requirements, pursuant to DCCP rules.

(1) *Workforce plan.* Contractor shall submit a workforce plan that complies with DCCP rules.

(2) *Training and support services.* Contractor shall utilize city tools and tools developed by the city's designated construction workforce convener that include training and support services.

(3) *Reporting requirement.* Contractor shall periodically report on progress meeting specific requirements as required by the DCCP.

(4) *Point of contact.* Contractor shall identify a designated point of contact for workforce development activities.

(5) *Outreach.* Contractor shall participate in outreach and recruitment events led by the city and the city's designated construction workforce convener.

(6) *Coordination.* Contractor shall coordinate with the DCCP and the city's designated construction workforce convener.

(b) *Additional requirements—Construction contracts and work orders excluded as contrary to law or agreement or subject to state or federal workforce development programs.* Construction contracts and work orders excluded pursuant to section 28-324(c) and (d) are subject to the requirements of subsections (a)(4)—(6) above, and shall also require the contractor to provide periodic reports on outreach and engagement efforts to connect city residents to employment opportunities on the project, as requested by DEDO.

(Ord. No. 387-23, § 2, 5-1-23)

Sec. 28-327. Enforcement.

(a) *Penalty.* A contractor's failure to meet or exceed applicable requirements as established by the work hours reflected in LCPtracker shall result in a penalty of thirty-one dollars ($31.00) for each hour not achieved up to a maximum of three percent (3%) of the maximum contract amount.

(b) *Compliance plan.* DEDO may enter into a compliance plan with contractors that fail to meet applicable target hire or apprentice utilization requirements pursuant to section 28-325 but demonstrate a good faith effort to comply pursuant to DEDO rules. Contractors that comply with the requirements of the approved compliance plan shall not be subject to the penalties in subsection (a) above.

(c) *Failure to pay penalty or perform compliance plan.* Failure of a contractor to pay penalties within sixty (60) days of mailing of a written notice assessing a penalty may be grounds for debarment pursuant to section 20-77. Failure of a contractor to perform as required by an approved compliance plan may be grounds for debarment pursuant to section 20-77. In addition, failure to pay an assessed penalty or perform as required by an approved compliance plan may result in the termination for cause of existing contracts.

(d) *Adjustment of requirements by DEDO's executive director.* Apprentice utilization and target hire requirements for a construction contract or work order may be adjusted if DEDO's executive director finds evidence that a project will have disproportionately limited work by trades with registered apprenticeship programs compared to projects of a similar size and type or insufficient access to individuals from target categories.

(Ord. No. 387-23, § 2, 5-1-23)

Sec. 28-328. Rules and regulations.

The executive director, or the executive director's designee, shall promulgate rules and regulations to effectuate the purposes of this article XI. Such rules shall be promulgated in accordance with D.R.M.C. chapter 2, article VI.

(Ord. No. 387-23, § 2, 5-1-23)

Sec. 28-329. Effective date—Applicability.

This article XI shall be effective upon final publication and applies to contracts advertised and work orders issued thirty (30) days after the rules contemplated by this article XI become effective.

(Ord. No. 387-23, § 2, 5-1-23)