CITY AND COUNTY OF DENVER
Denver Economic Development & Opportunity
Denver Construction Careers Program

RULES AND REGULATIONS FOR THE INTERPRETATION, ADMINISTRATION AND ENFORCEMENT OF ARTICLE XI OF CHAPTER 28, D.R.M.C., (REFERRED TO HEREIN AS THE "WORKFORCE ORDINANCE").

APPROVED AS TO FORM:

City Attorney
For the City and County of Denver

By: _____

Date: 4/30/24

APPROVED AND ADOPTED:

Adeeb Khan
Executive Director of Denver Economic Development & Opportunity

By: Adeeb Khan Digitally signed by Adeeb Khan Date: 2024.04.16 08:33:38 -06'00'

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Denver Construction Careers Program Rules and Regulations for the Interpretation, Administration and Enforcement of Article XI of Chapter 28, D.R.M.C.

RULE 1. SCOPE OF RULE AND AUTHORITY

A. These Rules are promulgated for the purposes of interpretation, administration, and enforcement of Article XI of Chapter 28, D.R.M.C., the "Workforce Ordinance."
B. Executive Order No. 28 establishes the Denver Economic Development & Opportunity ("DEDO") agency, formerly the Mayor's Office of Economic Development. The applicable authority of Executive Order No. 28 is found in Section 2.2.1 and 2.2.6 of the Charter of the City and County of Denver, 2002 revised. DEDO is headed by an Executive Director, appointed by the Mayor. The Executive Director and appropriate staff supervise and administer various divisions and programs within DEDO, including the Denver Construction Careers Program ("DCCP").
C. The Workforce Ordinance authorizes DEDO, through the DCCP, in cooperation with contracting city agencies, to develop and implement programs to increase the availability of a skilled construction workforce by increasing the availability of apprenticeships and other approved training programs and by requiring the utilization of workers living in economically disadvantaged areas and workers experiencing economic disadvantage on large city construction projects.
D. Pursuant to Sections 28-320 and 28-321 of the Workforce Ordinance DEDO, through the DCCP, is authorized to promulgate rules, regulations and policies necessary to effectuate the DCCP.
E. Pursuant to Section 28-321(c) of the Workforce Ordinance the Executive Director of DEDO delegates the administration of the Workforce Ordinance and the promulgation of associated rules and regulations to DEDO's Chief Workforce Development Officer.

RULE 2. PRIORITY AREAS OF ECONOMIC NEED

A. Priority areas of economic need are those neighborhoods identified as priority neighborhoods on DCCP's Priority Neighborhoods Map available on the DCCP website:

https://www.denvergov.org/Government/Agencies-Departments-Offices/Agencies-Departments-Offices-Directory/Economic-Development-Opportunity/Employers-Jobseekers/Denver-Construction-Careers-Program

B. The methodology used to determine priority areas was established using the 5 year American Community Survey. The DCCP will update the Priority Neighborhoods Map as it determines is necessary to reflect changes in measures of poverty, education, and unemployment. The DCCP may update the Priority Neighborhoods Map without

updating these rules and regulations. Maps will be dated and earlier versions of the map will remain available on the DCCP website.

C. The priority neighborhoods identified on the most current Priority Neighborhoods Map posted on the DCCP website when a contractor's workforce plan is approved will remain the applicable priority neighborhoods for the life of the contract or work order.

RULE 3. AGENCY LEVEL AGREEMENTS AND PROCUREMENT

A. The DCCP will work with agencies to develop agency level agreements with procedures for procurements subject to the Workforce Ordinance.

B. These agency level procedure documents will address:
   1. How contracting agencies will obtain workforce requirements;
   2. Horizontal construction vs. vertical determinations;
   3. Exclusions; excluded construction contracts and work orders;
   4. Procurement language;
   5. Workforce Development Certification;
   6. Proposed and final Workforce plans;
   7. Compliance; and
   8. Enforcement.

C. The contracting agency will document applicable workforce requirements in the city's contracting system when requesting sample and final contracts.

RULE 4. EXCLUSIONS

A. Section 28-324 of the Workforce Ordinance excludes certain work orders and contracts that would otherwise be covered contracts or covered work orders.

B. If the contracting agency believes an exclusion applies it will notify the DCCP and provide supporting documentation.

C. Emergency contracts and work orders.
   1. If the executive director of the contracting agency determines that a covered contract or covered work order is required to address an emergency and that the application of workforce requirements would delay or otherwise negatively impact the City's response to that emergency, the executive director will notify the DCCP of this determination in writing.
   2. Emergency contracts and emergency work orders are excluded from the requirements of the Workforce Ordinance.

D. Paving contracts and paving work orders.
   1. If the contracting agency believes an otherwise covered contract or work order consist primarily of paving as defined in the Workforce Ordinance, it shall submit supporting documentation to the DCCP.
   2. If the DCCP, in consultation with the contracting agency, agrees that the contract or work order consists predominately of paving the Workforce Ordinance does not apply.

E. Contrary to law or agreement.
    1. Construction contracts and work orders where the application of all Workforce Ordinance requirements is prohibited by an applicable agreement, grant, law, guidance, requirement, or determination, of a governmental or other entity that is providing funding or has oversight authority over the work or the contracting agency, or the facility where the work will be performed are excluded from the apprentice utilization and target hire requirements of the Workforce Ordinance.
    2. If the contracting agency believes application of apprentice utilization and target hire requirements would be contrary to law or agreement, as defined in the Workforce Ordinance, it will provide the DCCP with documentation.
    3. The DCCP and/or the contracting agency may consult with the City Attorney's Office to determine if this exception applies.
    4. Construction contracts and work orders excluded as contrary to law or agreement are still subject to the following requirements that will be included as contract requirements:
        i. Identifying a designated point of contact for workforce development activities;
        ii. Participation in outreach and recruitment events led by the city and the city's designated workforce convenor;
        iii. Coordination with the DCCP and the city's designates workforce convenor; and
        iv. Providing periodic reports on and attending outreach and engagement events to connect city residents to employment opportunities on the project.

F. Subject to state or federal workforce development or training programs.
    1. Contracts and work orders that require compliance with a state or federal workforce development or training program are excluded from apprentice utilization and target hire requirements of the Workforce Ordinance.
    2. If this exclusion applies the contracting agency will notify the DCCP that a state or federal workforce development or training program will be contractually required.
    3. Construction contracts and work orders subject to a state or federal workforce development program are still subject to the following requirements that will be included as contract requirements:
        i. Identifying a designated point of contact for workforce development activities;
        ii. Participation in outreach and recruitment events led by the city and the city's designated workforce convenor; and
        iii. Coordination with the DCCP and the city's designates workforce convenor.
        iv. Providing periodic reports on and attending outreach and engagement events to connect city residents to employment opportunities on the project.

G. The DCCP will notify agencies in writing of exclusion determinations.

RULE 5. ADJUSTMENT OF WORKFORCE REQUIREMENTS

A. The Executive Director, pursuant to Section 28-327(d) of the Workforce Ordinance, may adjust apprentice utilization and/or target hire requirements. The Executive Director hereby delegates authority to adjust requirements to the Chief Workforce Development Officer.
B. If the contracting agency or a contractor believe that the apprentice utilization and/or target hire requirements of the Workforce Ordinance are not achievable on a specific project they may request that the Chief Workforce Development Officer review the project and decide if an adjustment is appropriate.
C. The requestor shall contact the DCCP for details regarding required documentation and the submission process.
D. If an adjustment to the apprentice utilization requirement is requested, the requestor shall provide the Chief Workforce Development Officer with evidence that the hours of work that will be performed by trades with registered apprentice programs is disproportionately limited compared to projects of a similar size and type.
E. If an adjustment to the target hire requirement is requested, the requestor shall provide the Chief Workforce Development Officer with evidence that the project will have insufficient access to individuals from target categories.
F. The Chief Workforce Development Officer will determine, in his/her sole discretion, if an adjustment is appropriate and what the adjusted requirement will be. The Chief Workforce Development Officer will inform the requestor of the decision in writing.
G. All requests for adjustment shall be submitted by, and with the approval of, the Project Manager or other person designated by the Agency.

RULE 6. WORKFORCE PLANS

A. This Rule 6 identifies minimum Workforce Plan requirements. Agency level agreements may contain additional detail regarding Workforce Plan requirements. The Chief Workforce Development Officer, or their designee, may waive, modify, or add requirements for a specific project.
B. Contractor shall use the DCCP Workforce Action Plan Template available on the DCCP website to prepare their proposed workforce plan.
C. Workforce plans shall include:
    1. A designated workforce coordinator to serve as the primary point of contact for workforce issues for the life of the project.
    2. Outreach and community engagement commitments.
    3. Quarterly utilization projections.

i. Quarterly utilization projections must show the number of hours contractor anticipates achieving each quarter towards meeting each apprentice and target hire utilization requirement.
ii. If the Chief Workforce Development Officer, or their designee, determine that as a result of the delivery method the information necessary to create quarterly utilization projections is not available submission of utilization projections may be delayed.

4. Reporting Requirements including progress towards meeting outreach and community engagement commitments.

C. The DCCP and procuring agencies will develop procedures for the development, submission, and approval of workforce plans that will be reflected in agency level agreements.
D. Contractor is responsible for submitting a proposed Workforce Plan to the DCCP and addressing DCCP concerns so that DCCP approval of a final Workforce Plan is obtained by the deadline set in the procurement documents and/or contract.
E. An approved Workforce Plan must be in place no later than 60 days after issuance of a notice to proceed with construction.
F. The Chief Workforce Development Officer or their designee will notify the contractor when their workforce plan has been approved.
G. Compliance with the approved Workforce Plan, as it may be amended, is a contract requirement.

RULE 7. TRACKING AND COMPLIANCE

A. Contractor shall record all actual hours achieved and other required information in LCPtracker or another software system designated by DCCP if LCPtracker shall cease to be used for this purpose.
B. Each quarter the DCCP will review the actual hours achieved, as shown in LCPtracker, towards meeting each apprentice and target hire utilization requirement. Only hours worked by registered apprentices as defined in the Workforce Ordinance will be counted towards meeting apprentice utilization requirements. Hours worked by individuals enrolled in on the job training programs will not count towards meeting apprentice utilization requirements.
C. Contractor shall keep employee addresses current in LCPtracker.
D. DCCP will compare the total hours achieved in each apprentice and target hire utilization category from the start of the project to the total hours contractor projected they would achieve in each utilization category.
E. If the cumulative hours achieved in any utilization category falls below 95% of the hours projected for two consecutive quarters DCCP will notify contractor that they are out of compliance.

F. Within fifteen days of receiving a notice of non-compliance, contractor shall submit a written explanation and revised quarterly utilization projections that show how they intend to satisfy all utilization requirements.
G. DCCP will review contractor's explanation and revised utilization projections and may request additional documentation or a meeting. If the DCCP determines that contractor's revised projections are achievable, the Chief Workforce Development Officer, or their designee, will approve the revised utilization projections in writing. Once approved, the revised utilization projections will be used to review future quarterly progress.
H. If, at any time, contractor determines that it will not be able to satisfy any utilization requirement they may request that they be allowed to enter into a compliance plan. The contractor is responsible for submitting documentation, acceptable to the Chief Workforce Development Officer, demonstrating that they have made good faith efforts to meet all utilization requirements.
I. No apprentice shall work without proper or adequate supervision of the journey worker. For the purpose of these apprenticeship standards, adequate or proper supervision of the apprentice means the apprentice is under the supervision of a fully qualified journey worker or supervisor at all times who is responsible for making work assignments and ensuring safety at the worksite. Only hours worked by apprentices supervised at the journey level to apprentice ratio approved by the City of Denver Auditor will be counted.

RULE 8. COMPLIANCE PLANS

A. If the Chief Workforce Development Officer, or their designee, determine that a contractor was unable to meet applicable apprentice utilization or target hire utilization requirements despite substantial and ongoing efforts to meet or exceed applicable apprentice utilization and target hire utilization requirements "good faith efforts", the contractor may be allowed to enter into a compliance plan in DCCP's sole discretion.
B. The contractor has the burden of notifying DCCP in writing when it becomes aware that it will be unable to meet a utilization requirement.
C. The contractor requesting that it be allowed to enter into a compliance plan must provide DCCP with documentation of its good faith efforts to achieve workforce requirements. The DCCP may request, and contractor shall provide, additional documentation of good faith efforts.
D. The DCCP may require that a contractor take additional specific steps to meet workforce requirements before approving the use of a compliance plan.
E. Compliance plans will identify specific, quantifiable actions that the contractor must take to increase the construction workforce pipeline.
F. A contractor that completes the actions required by an approved compliance plan will not be subject to a penalty or other enforcement action for failing to meet requirements addressed in the approved compliance plan.

RULE 9. APPROVAL OF PRE-APPRENTICE PROGRAMS

A. Pre-apprentice programs must be approved, or conditionally approved, by DCCP before a contractor will get credit for hours worked by pre-apprentices.
B. A contractor, or other entity, seeking DCCP approval of a pre-apprentice program shall apply online using the forms and process set forth on the DCCP's website.
C. DCCP will use guidelines and criteria established by the U.S. Department of Labor or the Colorado State Apprenticeship Agency when evaluating pre-apprentice programs including but not limited to those items in (D) below.
D. DCCP will evaluate whether the program:
    1. Has a connection to an existing apprenticeship program;
    2. Utilizes industry approved training and curriculum;
    3. Includes hands-on learning with a career focus; and
    4. Provides access to supportive services and career counseling.
E. Applicants will provide:
    1. Enrollment, graduation, and employment rates;
    2. Details of the program including a syllabus or curriculum overview; and
    3. Partnership agreements and letters of support from program partners.
F. Minimum requirements:
    1. Materials: Hands-on components of training must utilize proper equipment for each skill set being taught. Principal instructors or guest instructors must be physically present during hands-on elements of the program, including instruction and assessments.
    2. Instruction: The principal instructor must be primarily responsible for teaching skills as described in the curriculum and overseeing any portions of the training taught by guest instructors.
    3. Class size and student/instructor ratios: Classes should be limited to twenty-five pre-apprentices, with a maximum of six students per instructor during hands-on exercises that may impact students' safety. Programs that plan on class sizes exceeding twenty-five or having a higher student/instructor ratio should describe how students will be adequately observed and directed during hands on activities. Classes should be conducted with the class size and ratios as approved in the DCCP application.
G. Review of Applications for Approval of Pre-Apprentice Programs
    1. DCCP will review applications for completeness and accuracy.
    2. DCCP will request supplemental information and/or responses as it deems necessary to evaluate the proposed program.
    3. It is the applicant's responsibility to provide requested information and remain in contact with the DCCP. If an applicant fails to respond to a DCCP request for additional information within forty-five days, the application will be considered abandoned.
    4. DCCP will strive to make determinations within forty-five days of the applicant providing all requested information but reserves the right to take longer if necessary to address the application.

5. Applicants will be notified of determinations in writing and approvals will be valid for two years from the determination date.
6. If the DCCP receives information suggesting that a program is no longer in compliance with pre-apprentice program requirements, it will contact the program sponsor and request additional information. If the program sponsor does not respond or if the Chief Workforce Development Officer determines that the program no longer complies with DCCP requirements, DCCP may withdraw approval of the program in its sole discretion.
7. Applicants must notify DCCP of changes in ownership or control of the applicant, or of changes to contact information.
8. Approved applicants will be added to DCCP's website with a summary of the program, contact information, certifications, credentials, stipends, and support services.
9. An applicant may withdraw its application by notifying the DCCP in writing at any time.
10. DCCP, through its online application system, will transmit renewal notifications to the applicants prior to approval expiration date. The program sponsor is responsible for keeping their contact information current.

H. Conditional Approval
   1. Contractor may request conditional approval of new programs without submitting enrollment, graduation, and employment data.
   2. After one year of operation, contractor shall submit enrollment, graduation, and employment data for the first year that a conditionally approved pre-apprentice program is in operation.
   3. Enrollment, graduation, and employment data required in paragraph H.2 above shall be submitted no later than sixty days after the end of the first year of operation.
   4. The DCCP will review submitted data and notify contractor if the program is fully approved.
   5. Conditional approval will remain valid until it is withdrawn by the DCCP.

RULE 10. CLOSEOUT

A. When work under a covered construction contract or covered work order is complete and the City has issued final acceptance of the work, the contracting agency shall notify the DCCP in writing that it intends to close out the contract or work order.
B. Upon being notified, the DCCP will conduct a final review of the project to determine if the requirements of the Workforce Ordinance, applicable rules and regulations, the applicable workforce plan and any applicable compliance plan have been satisfied.
C. The DCCP will endeavor to complete its final review in a timely manner such that it will not delay final settlement and send written notification to the contracting agency and contractor of its determination.

D. The contracting agency will not proceed to final settlement until it received written notice from the DCCP that the contractor has satisfied applicable workforce requirements.
E. If the DCCP notifies the contractor and contracting agency that all workforce requirements have been met the contracting agency may proceed to final settlement.
F. A contractor that fails to satisfy applicable workforce requirements is subject to enforcement action pursuant to Section 28-327 of the Workforce Ordinance.

RULE 11. SCOPE OF ADMINISTRATIVE REVIEW

A. If a contractor believes an enforcement decision pursuant to Section 28-327 is inconsistent with the Workforce Ordinance, these Rules or the workforce requirements of their contract, the contractor may ask that the decision be reviewed by the Chief Workforce Officer.

B. If a contractor believes an enforcement decision pursuant to Section 28-327 made by the Chief Workforce Officer is inconsistent with the Workforce Ordinance, these Rules and Regulations, or the workforce requirements of their contract, the contractor may ask that the decision be reviewed by the the Executive Director of Denver Economic Development and Opportunity. The decision of the Executive Director shall be the City's final administrative decision and may be appealed pursuant to Colorado Rules of Civil Procedure 106(a)(4) as a final decision.

C. All requests for review under this Rule must be made in writing and include supporting documentation required to evaluate the decision. DCCP will provide the appealing contractor with written notification of its review decision.

D. All requests for review under this Rule must be received by the Chief Workforce Officer or the Executive Director within ten (10) calendar days of the contractor's receipt of the decision pursuant to Section 28-327. The contractor waives all claims it may have related to decisions if it does not request a review within this time.

E. Decisions made by the DCCP, the Chief Workforce Officer or a designee of the Chief Workforce Officer that pertain to the general administration of the Workforce Ordinance are not subject to review and, if applicable, the contractor will receive written notification that such decision is not subject to review.