

Sec. 2-355. - Responsible employer ordinance.

- (a) The board of aldermen hereby finds and determines that the failure of certain construction firms awarded contracts funded by the city to **hire Somerville residents, minorities or women, and to include and enforce provisions requiring compliance with state laws governing the payment of prevailing wages, the provision of workers compensation coverage, and the proper classification of individuals as employees and not as independent contractors, as well as provisions concerning health insurance coverage and state-certified apprenticeship programs, is injurious to the life, health and happiness of individuals employed by such firms and is deleterious to the quality of life in the city where most of such individuals reside.**
- (b) Every contract awarded by the city under G. L. c. 149, § 44A (2) where the amount of the contract is more than \$100,000.00, and any subcontract awarded in connection with any such general contract where the amount of such subcontract is more than \$25,000.00, **and the project is funded in whole or in part by City funds, or funds which, in accordance with a Federal grant or otherwise, the City expends or administers, or which the City is a signatory to the construction contract, the worker hours on a craft-by-craft basis shall be performed,** in accordance with the contract documents provided for in paragraph shall be deemed to incorporate by reference the provisions of sub-parts (1) through (7) of this subsection together with the provisions of subsections (c), (d) and (e) of this section.
- (1) The bidder and all subcontractors under the bidder shall comply with the requirements of G. L. c. 149 concerning the payment of prevailing wage rates to their employees;
- (2) The bidder and all subcontractors under the bidder must maintain and participate in a bona fide apprentice training program as defined by G. L. c. 23, §§ 11H & 11I for each apprenticeable trade or occupation represented in its workforce that is approved by the division of apprentice training of the department of labor and workforce development of the Commonwealth and must abide by the apprentice to journeymen ratio for each trade prescribed therein in the performance of the contract;
- (3) The bidder and all subcontractors under the bidder must offer, at its expense, hospitalization and medical benefits for all individuals employed on the project or coverage which is comparable to the hospitalization and medical benefits provided by the health and welfare plans in the applicable craft recognized by G. L. c. 149, § 26, in establishing minimum wage rates. All such plans shall meet or exceed state requirements for such plans.
- (4) The bidder and all subcontractors under the bidder must maintain appropriate industrial accident insurance coverage in accordance with G. L. c. 152 for all individuals employed on the project;
- (5) The bidder and all subcontractors under the bidder must properly classify individuals employed on the project as employees rather than independent contractors and comply with all laws concerning workers' compensation insurance coverage, unemployment taxes, Social Security taxes and income taxes as respects all such employees.
- (6) **At least fifty (50%) percent of the total employee man-hours in each trade shall be filled by bona fide Somerville residents;**
- (7) **At least twenty-five (25%) percent of the total employee man-hours in each trade shall be filled by minorities and women;**

For purposes of this paragraph, worker hours shall include work performed by persons filling apprenticeship and on-the-job training positions.

- (c) All bidders and all subcontractors under such bidders who are awarded, or otherwise obtain, contracts from the city on projects governed by G. L. c. 149, § 44A (2), shall comply with the obligations described in sub-parts (1) through (7) of subsection (b) of this section for the entire duration of their work on the project, and an officer of each such bidder or subcontractor under the bidder shall certify under oath and in writing on a weekly basis that they are in compliance with these obligations.
- (d) Any bidder or subcontractor under the bidder who fails to comply with any of the obligations described in sub-parts (1) through (7) of subsection (b) of this section for any period of time, or fails to comply with the weekly certification obligations described in subsection (c) of this subsection shall be subject to any or all of the following sanctions:
- (1) Temporary suspension of work on the project until compliance is obtained; or,
 - (2) Withholding by the city of payment due under the contract until compliance is obtained;
 - (3) Permanent removal from any further work on the project; or,
 - (4) Recovery by the city from the general contractor of 1/10 of one percent of the general contract or \$1,000.00, whichever sum is greater, in the nature of liquidated damages assessed for each week that the general contractor is in non-compliance or, if a subcontractor is in non-compliance, the recovery by the city from the general contractor as a back charge against the subcontractor of 1/10 of one percent of the subcontract price, or \$400.00, whichever sum is greater, in the nature of liquidated damages assessed for each week that the subcontractor is in non-compliance.
- (e) In addition to these sanctions a general bidder or contractor shall be equally liable for any violation of the obligations described in sub-parts (1) through (5) of subsection (b) of this section committed by any of its subcontractors or sub bidders, excepting only those violations which arise from work performed by subcontractors with subcontracts governed by G. L. c. 149, § 44F. Any contractor or subcontractor who has been determined to have violated any of the provisions of subsections (b) or (c) of this section shall be barred from performing any work on any future contracts awarded by the city for six months for the first violation, three years for the second violation, and permanently for a third violation.
- (f) The provisions of this section shall not apply to construction projects for which the low general bid was less than \$100,000.00, or to work performed pursuant to subcontracts governed by G. L. 149, § 44F where the bid for such subcontract was less than \$25,000.00.
- (g) **Definitions**

The following words, as used in this ordinance shall, unless the context otherwise requires, have the following meanings:

Agency shall mean the unit of government, within the structure of the City of Somerville that is responsible for the application, administration and execution of Community Development Block Grants, projects in the area of housing and employment, and Federal affirmative action programs, currently the OSPCD.

Approved Apprenticeship Training Program shall be defined as it is in G.L. c. 23, § 11H and 11I and is approved by the Division of Apprentice Training of the Department of Labor and Industries.

Contract Compliance Office shall mean that office within the structure of the City of Somerville government that has purview over the areas of compliance and enforcement for Federal, State and/or local affirmative action programs.

Minority person shall mean and include those persons who are Black, Hispanic, Asian, or native American.

Resident shall mean any person for whom the principal place where that person normally eats and sleeps and maintains his or her normal personal and household effects is within the City limits for the City of Somerville.

(h) Compliance and Enforcement.

a. The agency, as defined in subsection (g), shall be designated as responsible for the planning, implementation and enforcement of this section, and shall have the following duties:

Planning and Implementation: Prior to the commencement of any construction project, capital works, or City economic development plan covered by this section, the agency shall:

1. Review spending plans for such project;
2. Identify the number of job positions to be created by the project;
3. Specify training needed for entry level and semi-skilled positions by job title;
4. In conjunction with appropriate unions and their existing collective bargaining agreements, recruit employees and arrange for training through established union apprenticeship programs,
5. Establish a job screening and referral agency which shall refer City residents, minorities, and women to contractors and subcontractors to enable such contractors and subcontractors to comply with this section.
6. Establish and maintain a database of Somerville based contractors and Somerville residents skilled in the construction trades

b. The Contract Compliance Office for the City of Somerville shall be designated as responsible for enforcing and monitoring compliance with the provisions of this section and for contract provisions established in accordance therewith and shall have the following duties:

Enforcement: Throughout the entire duration of any construction project, capital works, or City economic development plan covered by this section, the Contract Compliance Office shall

1. Require all contractors and subcontractors affected by this section to submit weekly workforce charts listing workers by name, residential address, craft, job category, hours worked, sex, race and apprenticeship participation. These charts shall be public records.
2. Negotiate with all contractors/developers in order to identify and classify construction jobs by job titles, hiring dates, duration and training.
3. Register all interested community-based organizations, and notify such organizations of any pre-award conferences between the agency and developer/contractor relating to hiring requirements and goals as stated herein.

(i) Liaison Committee.

The agency shall establish a liaison committee which shall meet monthly, in a forum open to the public, to review the agency's reports, monitor compliance with the provisions of the section, and make recommendations to the Agency and the Board of Aldermen regarding enforcement of this section. The agency shall accept nominations of three (3) persons from interested groups including, but not limited to: Union Contractors, Non-Union Contractors, Boston & Greater Boston Building Trades, State Office of Minority Business Assistance, Contractor Association(s) of Somerville, training agency personnel, human rights activist groups, women's organizations, community-based organizations and the Somerville Chamber of Commerce. The agency shall thereafter select one person from those nominations submitted by each organization to serve without compensation for a term of two (2) years. This nomination and selection process shall be used to fill any vacancy.

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