

37 CHAPTER 2 - ADMINISTRATION

38 ~~Article~~ARTICLE XIII. - ~~Requirements for Receiving APPRENTICE PREFERENCE~~
39 ~~POLICY~~Preference in Bidding on City Construction Projects Which Allow for Employing
40 Apprentices

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42 Sec. 2-653. - Findings of fact.

43 WHEREAS, Journey Level construction workers are retiring in greater numbers than the
44 number of applicants who are available to replace them, which in turn is creating a shortage of
45 skilled construction workers; ~~and~~

46 WHEREAS, ~~The shortage of skilled workers with craft labor skills creates~~poses a
47 serious challenge not only to the City and its capital improvements projects, but to the economic
48 health of the community as a whole; ~~and~~

49 WHEREAS, ~~The City recognizes that organized, formal apprenticeship training~~
50 programs are an effective means of providing training and experience to individuals in
51 construction skills and safety procedures; ~~To this end, the~~ ~~and~~

52 WHEREAS, ~~the City Commission has determined that City-contracted construction~~
53 projects present a significant opportunity to promote and sustain employment of apprentices in
54 the construction trades; ~~and~~

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56 Sec. 2-65~~43~~. - Definitions.

57 [The following words and phrases as used in this article shall have the following
58 meanings unless a different meaning is clearly required by the context:]

59 *Apprentice* means any person who is enrolled and participating in an apprenticeship
60 program registered with the State of Florida Department of Education and/or the United States
61 Department of Labor. ~~If the work required on a City construction project calls for training in an~~
62 ~~area for which no the State of Florida Department of Education and/or United States Department~~
63 ~~of Labor approved program exists, apprentice shall mean any person who is participating in an~~
64 ~~industry certification training program or a company sponsored training program related to the~~
65 ~~work being performed on a City construction project.~~

66 *Bid* (noun) means any bid, proposal, statement of qualifications, etc. that is submitted in
67 response to a solicitation for such issued by the City.

Commented [DJD1]: GRU staff recommend deleting all language after 1st sentence. St. Pete procurement staff have indicated that restricting apprenticeship programs to only state or DOL programs makes it difficult to find apprentices in programs that are targeted to public projects like street paving, sidewalk repair, utilities, etc.

68 Bidder means any individual, firm, corporation, partnership, company, association, joint
69 venture, or other entity that seeks the award of a construction contract.

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70 City means the City of Gainesville Municipal Corporation and/or Gainesville Regional
71 Utilities.

72 Construction project (-or "project") means any project or construction-work project
73 contracted by the City and/or paid for with City funds, the the-total bid price of which of which
74 equals or exceeds \$500,000.00. As used within the context of this ordinance, the terms
75 construction project and construction work may be used interchangeably.

Commented [DJD2]: GRU staff recommend clarifying that the "value" (\$500K) used here is the anticipated bid price award for the contract being put out for bid.

76 Construction means the and which involves the building (verb), altering, repairing,
77 improving, demolishing or replacing of of any public structure, building, roadway, utility or
78 other public improvement. Within the context of this ordinance, the terms construction project
79 and construction work may be used interchangeably.

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80 Cooperative purchasing agreement means materials, equipment or services purchased
81 under the terms and conditions of another local, state, federal, or other public agency's bid, or
82 cooperative bids put together by other public agencies.

83 Disadvantaged worker means either a person who has a criminal record or a person who
84 has received public assistance benefits within the twelve (12) months preceding employment by
85 the Prime contractor or subcontractor.

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Commented [DJD3]: Should this definition be deleted? Employment of disadvantaged workers is not discussed anywhere else in the document.

86 Employ shall mean to permit a person to work for wages.

88 Payroll records means the records pertaining to employees that document their name,
89 address, employee classification, rate of pay, daily and weekly number of hours worked,
90 deductions made and actual wages paid.

91 Prime contractor means:

- 92 (1) A party to a contract for a construction project.
- 93 (2) A managing corporate officer of a party to a contract for a construction project
94 who has personal involvement or responsibility in obtaining such contract or in
95 supervising or performing the work prescribed by such contract; or
- 96 (3) A person or entity with more than fifty percent (50%) ownership interest in a
97 party to a contract for a construction project.

98 Subcontractor means a person or company that performs through a secondary contract
99 with the Prime Contractor some or all of the obligations of the Prime Contractor.
100

101 Work hours means the actual time that is spent working on the site of a construction
102 project by workers who are employed by contractors or subcontractors on the construction
103 project, or who are performing offsite fabrication in direct support of the construction project.
104 Work hours excludes any hours worked by forepersons, superintendents, owners, professionals
105 (such as architects, engineers or surveyors), or administrative/office staff.

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106
107 **Section 2-6545. – Requirements a Bidder must comply with to qualify for ~~for Receiving an~~
108 Apprentice Preference inwhen Bidding on City C ~~construction P~~ projects Which Allow
109 for Employing Apprentices.**

110 In the bidding of, or letting of contracts for construction work projects as defined herein,
111 the City Commission, or other purchasing authority of the City, may give a preference to bids
112 from Prime contractors who commit to employing apprentices as part of the labor force that is
113 engaged on a construction project. Contractors must be able to demonstrate that at least ten
114 percent (10%) of all labor hours associated with the project will be comprised of registered
115 apprentices. -The amount of the preference given for meeting this requirement may not exceed
116 five percent (5%) of the bidder's total bid price, as described below, but under no circumstances
117 shall the cost differential exceed \$25,000.00. The following process outlines the steps that must
118 be followed ~~required~~ to qualify bids to receive this incentive:

119 ~~(a) The City department responsible for issuing a solicitation for construction work shall~~
120 ~~determine, in consultation with the project engineer, architect, Procurement staff, or~~
121 ~~other knowledgeable persons as necessary, a percentage of the total project~~
122 ~~construction work hours which can be performed by apprentices as a form of on-the-~~
123 ~~job training. This percentage may be subsequently adjusted to reflect comments,~~
124 ~~concerns and/or recommendations submitted by potential bidders during the~~
125 ~~appropriate portions of the solicitation process.~~

Commented [DJD4]: GRU staff are concerned that making the percentage of work completed by an apprentice variable will lead to inconsistency across the organization and confusion for contractors. GRU staff recommend a consistent measure.

126 ~~(b)~~ (a) To qualify for an apprentice ~~-based~~ preference, a Prime contractor responding to a
127 solicitation associated with a construction project must submit a description of their
128 proposed apprentice employment as part of their bid. The description should include,
129 at a minimum:

- 130 (1) Total work hours estimated for the construction project;
- 131 (2) A demonstration that the percentage of total work hours proposed to be performed
132 by apprentices is achievable under the contractor's project work schedule;
- 133 (3) The estimated duration of the employment of the apprentices; and,
- 134 (4) Documentation outlining the type(s) of training and/or certification(s) apprentices
135 can expect to gain as a result of their employment on the project, and the agency
136 or entity who is responsible for overseeing the apprenticeship program under
137 which the training or certification is being provided.

138 ~~(e)(b)~~ In addition to those criteria listed in 2-6545(b), eligibility for an apprentice-based
139 preference shall be determined on a “per project” basis. As such, a Prime contractor
140 may not combine apprentice employment from previous or multiple on-going projects
141 as a means of qualifying for an apprentice-based preference. A Prime contractor
142 may, however, include in their application for a preference those apprentices and/or
143 apprenticeship programs which are supported by one or more of their subcontractors
144 employed on the construction project being bid.

145 ~~(c)~~ For purposes of determining ~~An apprentice-based preference awarded to a Prime~~
146 ~~contractor is limited to a maximum of ten percent (10%) of the contractors' total bid~~
147 ~~price, as further discussed below, but in no case shall the cost differential exceed~~
148 ~~\$50,000.00. Total bid price the applicability of the Apprentice preference to a~~
149 ~~particular construction project, the total bid price shall include not only the base bid~~
150 ~~price but also any adjustments to the base bid price which are a result of alternates~~
151 ~~requested by the City.~~

152 ~~(e)~~ A Prime contractor who qualifies for an ~~a~~ Apprentice-based preference ~~may~~ is not
153 ~~restricted from applying for any other types of bidding preference which may be~~
154 ~~available to them (such as a Local Preference or a Small or Service-disabled Veteran~~
155 ~~Business Preference) which they may be entitled to receive.~~

156 ~~(f)~~ The preference percentage that is awarded to a Prime contractor for employing
157 apprentices may be adjusted by the City up to a maximum figure of ten percent (10%)
158 to reflect such factors as:

- 159 (1) ~~The number of apprentices that will be employed on the construction project;~~
- 160 (2) ~~The length of time the apprentices will be employed;~~
- 161 (3) ~~Additional benefits beyond hourly wages apprentices are eligible to receive, including~~
162 ~~health benefits and/or assistance with transportation needs;~~
- 163 (4) ~~The employment of disadvantaged workers who are enrolled in an apprenticeship~~
164 ~~program;~~

165 ~~(5)(d)~~ The contractor's commitment to supporting an apprenticeship program both during the
166 time of construction and following completion of the project being bid.

Commented [DJD5]: GRU staff recommend limiting the preference percentage to a maximum of 5% of the total bid price, and no greater than \$25,000.

Commented [DJD6]: GRU staff would prefer that this incentive not be allowed to be combined with Local or Service-disabled Veteran Business preferences.

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Commented [DJD7]: GRU staff recommend sticking to 5% across the board to ensure that the preference is implemented uniformly and consistently across the city on all projects.

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167 **Sec. 2-6556. – Prevailing Wage Rate Required; Exception for Conflict.**

- 168 (a) ~~The Prime contractor shall be responsible for ensuring that any apprentices it or its~~
169 ~~subcontractors employs on a City construction project are paid wages not less than~~
170 ~~the advertised general prevailing wage rates for the work classification in which the~~
171 ~~apprentices are performing.~~ The Prime contractor and its subcontractors shall
172 ascertain and comply with all applicable general prevailing wage rates for apprentice
173 and trades workers which are in effect as of the date the Prime contractor submits its
174 response to a solicitation for construction work issued by the City.
- 175 (b) ~~Prevailing wage rates are determined by the most recent United States Department of~~
176 ~~Labor prevailing wage report.~~ In the event of a conflict between the City's Living

177 Wage requirement and the prevailing wage requirement, the higher prevailing wage
178 ~~requirement shall apply unless pre-empted by Federal or State regulations govern.~~

179 **Sec. 2-6567. – Exemptions to Apprentice Preference Policy.**

180 The preference set forth in this article shall not apply to any of the following types of
181 construction projects: ~~Waiver of Apprenticeship Preference; Exceptions for Cooperative~~
182 ~~Purchasing Agreements and Inter-Local Agreements.~~

183 (a) Projects where application of the Apprentice preference would be prohibited or in
184 conflict with federal or state law or the terms of a federal or state grant applicable to
185 the construction project.

186 (b) Construction projects that are initiated under a cooperative purchasing agreement.

187 (c) ~~Projects or~~ which are solicited through another public agency's procurement process
188 as part of an inter-local agreement, are not subject to the requirements of this
189 ordinance.

190 (d) Projects initiated under an emergency situation.

191 (e) Projects for which there are no registered apprenticeship programs for any of the
192 work which is to be performed as part of the construction project.

193 (a) ~~The City may choose to waive a preference for employing apprentices in solicitation~~
194 ~~documents if it is determined by the issuing department that the construction project being bid~~
195 ~~involves a high proportion of equipment and materials costs compared to the anticipated labor~~
196 ~~hours, or that there is an insufficient number of apprentices available to meet the preference~~
197 ~~requirements. The issuing department shall submit a recommendation to this effect in writing to~~
198 ~~the City Commission upon presenting the contract for the construction project to the City~~
199 ~~Commission for approval.~~

200 (b) ~~Construction projects that are initiated under a cooperative purchasing agreement, or which are~~
201 ~~solicited through another public agency's procurement process as part of an inter-local agreement, are~~
202 ~~not subject to the requirements of this ordinance.~~

203 **Sec. 2-6587. – Compliance; Documentation; Corrective Action; Enforcement.**

204 (a) The contract for a construction project between the City and a Prime contractor shall
205 include a provision requiring the Prime contractor to comply with the requirements of
206 this ordinance, if applicable, preferential scoring was used in the awarding of the
207 contract.

208 (b) The Prime contractor must make, and require its subcontractors who employ
209 apprentices to make, good faith efforts to replace any apprentice who can no longer
210 work on a construction project with another apprentice in order to achieve the work
211 hours and maintain the apprentice participation percentage required for the project by
212 the City.

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Commented [DJD8]: GRU staff suggest expanding exemptions to include more items. CM at Risk?

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Commented [DJD9]: Tony Cunningham, GRU, commented: Not excited about this one – but I guess it could be used the way it's written if really didn't want to use the apprenticeship incentive on a project – would not play out well publicly.

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Commented [DJD10]: GRU staff suggest expanding exemptions to include more items. CM at Risk?

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Commented [DJD11]: Tony Cunningham: Whole section is very burdensome on the contractor and subs (city staff also but more lots of work on contractors). If a project already has certified payroll being submitted (some PW projects will) these requirements aren't that different. Usually certified payrolls are required when project has federal funding. None of our W/WW projects submit a certified payroll so this would be an added level of administrative work on the project (both contractor and city). Not sure if projects in ES have certified payrolls already.

Commented [DJD12]: (Alternate wording suggested by Diane Wilson: "...if preferential scoring was used in the awarding of the contract.")

Commented [DJD13]: Tony Cunningham: What sets the "apprentice participation percentage" mentioned in this paragraph? Does city staff (refer to Section 2-654 (a))? OR Does contractor in bid submittal through the requirements in Section 2-654 (b) (2)? We would have to ensure that the agreed upon "apprentice participation percentage" was incorporated into the contract documents and signed by both parties. The PM will have manage the compliance of this program using the agreed upon apprentice participation percentage – so we don't want confusion here. (I could see city staff maybe missing mark on what participation is possible – then contractor being stuck with an unattainable program – hopefully this is set or agreed to with contractor at contract negotiation time period)

- 213 (c) The Prime contractor on a construction project shall be responsible for meeting
 214 ~~achieving and maintaining t~~the required number of aApprentice work
 215 ~~hours participation percentage~~, as well as fulfilling any other commitments made to
 216 receive the preference award, ~~for the duration of the contract for the construction~~
 217 ~~project~~. If the Prime contractor is not able to achieve ~~or maintain~~ the required number
 218 ~~of work hours percentage~~ or ~~the~~the associated commitments, the Prime contractor
 219 must submit demonstrate and documentation to the ~~that good faith efforts were made~~
 220 ~~to achieve or maintain the required percentage. The Prime contractor shall submit~~
 221 ~~such documentation to the~~ City department responsible for overseeing the
 222 construction project, who will review and determine whether the Prime contractor
 223 ~~made a~~ good faith efforts ~~made by the Prime contractor are adequate~~to comply.
- 224 (d) The Prime contractor shall keep, and shall require its subcontractors who employ
 225 apprentices to keep, accurate records showing the total hours of work performed on a
 226 City construction project, and the name, address, trade classification, hours worked,
 227 evidence of apprenticeship status, and employment status of all apprentices asserted
 228 to meet the percentage required to qualify for an apprenticeship preference. In
 229 addition, the Prime contractor shall keep, and shall require its subcontractors who
 230 employ apprentices to keep, accurate payroll records for all apprentices which
 231 includes name, address, work classification, the straight time and overtime hours
 232 worked each day and each week, fringe benefits (if any), and the actual per diem
 233 wages paid to each apprentice hired in connection with a construction project. In the
 234 event that there is no work performed during a given week by an apprentice, the
 235 certified payroll record shall be annotated "No Work" for that week. The Prime
 236 contractor shall submit these records upon request or at a minimum on a quarterly
 237 cycle to the City department overseeing the construction project, ~~on a quarterly cycle~~
 238 ~~(or a shorter cycle if deemed more appropriate by the department) for the duration of~~
 239 ~~the project~~. Records shall be cumulative for the duration of the construction project
 240 and shall indicate any new apprentice hires.
- 241 (e) If the Prime contractor has not met the requirements of this section, the City
 242 department responsible for overseeing the construction project will provide to the
 243 Prime contractor a written notice of noncompliance. The Prime contractor will be
 244 required to present a corrective action plan within ten (10) days of such notice. Once
 245 the corrective action plan is approved by the overseeing department, the department
 246 will provide a time period for completion of the corrective action plan. The time
 247 period for completion of the corrective action plan shall not exceed thirty (30) days,
 248 unless the overseeing department determines that the Prime contractor has
 249 demonstrated to the department's satisfaction that a longer time period is necessary
 250 and in the best interest of the City. If the Prime contractor fails to correct the
 251 deficiency within the agreed upon time period, the overseeing department shall
 252 address such noncompliance as follows:

Commented [DJD14]: Bill Shepherd: add additional language to say: "...project upon request or at a minimum on a quarterly cycle..."

- 253 ~~(1) First violation~~ ~~The Prime contractor will forfeit from the retainage the dollar~~
 254 ~~value of the difference between:~~
 255 i. ~~The percent (%) of the apprentice preference applied against the dollar value of~~
 256 ~~the total hours of work performed on the construction project; and,~~
 257 ii. ~~The dollar value of the labor hours actually performed by apprentices during the~~
 258 ~~construction project.~~
 259 ~~(2)(1) Second violation~~ ~~The Prime contractor will be disqualified debarred~~
 260 ~~from applying for any bidding preferences of any type responding to solicitations~~
 261 ~~for all City contracts for one (1) year.~~
 262 ~~(3)(2) This Second violation~~ ~~The Prime contractor will be debarred disqualified~~
 263 ~~from responding to applying for any bidding preferences of any type solicitations~~
 264 ~~for all City contracts for three (3) years.~~
 265 (f) Contracts and solicitation documents shall provide that the failure of any Prime
 266 contractor to comply with any of the requirements of this section may result in
 267 consequences for noncompliance.

Commented [DJD15]: Tony Cunningham: Would suggest deleting the First Violation completely. Moving 2nd and 3rd up as 1st and 2nd violation. Also these violations are eliminating the contractor from bidding on any solicitations – seems little harsh (over an administrative program not a work quality or performance issue – we can't eliminate folks from bidding that easily for other construction issues) Would be more appropriate to not allow them to participate in the preferential bidding for 1 yrs (1st violation) and 3 yrs (2nd violation). Could make a 3rd violation that disbars from bidding for 1 yr if want to keep a bigger stick.

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268 **Section 2.** It is the intention of the City Commission that the provisions of Section 1 of
 269 this Ordinance shall become and be made a part of the Code of Ordinances of the City of
 270 Gainesville, Florida, and that the sections and paragraphs of this Ordinance may be renumbered
 271 or re-lettered in order to accomplish such intentions.

272 **Section 3.** If any word, phrase, clause, paragraph, section or provision of this ordinance
 273 or the application hereof to any person or circumstance is held invalid or unconstitutional, such
 274 finding shall not affect the other provisions or application of the ordinance which can be given
 275 effect without the invalid or unconstitutional provisions or application, and to this end the
 276 provisions of this ordinance are declared severable.

277 **Section 4.** All ordinances or parts of ordinances, in conflict herewith are to the extent of
 278 such conflict hereby repealed.

279 **Section 5.** This ordinance shall become effective immediately upon adoption.

280 **PASSED AND ADOPTED THIS ____ DAY OF _____, 2019.**

281
 282
 283 _____
 284 LAUREN POE
 285 MAYOR

286
 287
 288 ATTEST: Approved as to form and legality
 289

