

# City of Salem

*In the year two thousand two*

An Ordinance to amend an Ordinance pertaining to Public Construction Projects

***Be it ordained by the City Council of the City of Salem, as follows:***

Section 1. Chapter 2, Article XII. Employment of Salem Area Residents in Private and Public Construction Projects is hereby amended by deleting this Article in its entirety and inserting in place thereof the following:

## **Article XII. Public Construction Projects**

Sec. 2-1831. Conditions for Bidding on Public Construction Contract

Purpose: Whereas the City of Salem expends substantial municipal funds for public construction projects; a large portion of said money being derived from taxes paid by city residents; that accordingly it is in the public interest, health, welfare and safety to ensure that the employees on such projects are paid at the lawfully required wage rates, have been trained in a bona fide apprenticeship training program, have hospitalization and medical coverage, and are classified according to the law. Further, that in light of the economic loss to the city when bidders and subcontractors who perform work on public construction projects are not from the Salem area and/or do not hire workers from the Salem area, it is in the public interest to establish goals for the hiring of Salem residents on public construction projects, and it is found that these provisions will serve the *public* interest, health, welfare and safety as described hereinabove.

(a) All bidders and subcontractors, including subcontractors that are not subject to MGL. Chap. 149, Sec. 44F, under the bidder for projects subject to MGL Chap. 149, Sec. 44A(2) and MGL Chap. 30. Sec. 39M shall as a condition for bidding or for an award of a subcontract on a non-filed sub-bid work, verify under oath and in writing at the time of bidding that they comply with the following obligations, and such obligations hereby are incorporated by reference into the specifications for city construction projects:

(1) The bidder and all subcontractors under tile bidder must comply with the obligations established under MGL Chap. 149 to pay the appropriate prevailing wage rates to their employees.

(2) The bidder and all subcontractors under the bidder must at the time of bidding maintain or participate in a bona fide apprentice training program as defined by Mass. Gen. L. c. 23, §§11H & 11I for each apprenticeable trade or occupation represented in their workforce that is

approved by the Division of Apprentice Training of the Department of Labor and Workforce Development and must register all apprentices with the Division and abide by the apprentice to journeyman ratio for each trade prescribed therein in the performance of any work on the project.

(3) The bidder and all subcontractors under the bidder must at the time of bidding furnish at their expense, hospitalization and medical benefits and/or coverage for all their mechanics and apprentices, teamsters, chauffeurs, and laborers (as those employee classifications are used in Mass. Gen. L. c. 149, §26) at least comparable in value and coverage to the hospitalization and medical benefits provided by the health and welfare plans in the applicable craft recognized by Mass. Gen. L. c. 149, §26 in establishing minimum wage rates.

(4) The bidder and all subcontractors under the bidder must maintain appropriate industrial accident insurance coverage for all the employees on the project in accordance with Mass. Gen. L. c. 152.

(5) The bidder and all subcontractors under the bidder must properly classify employees as employees rather than independent contractors and treat them accordingly for purpose of workers' compensation insurance coverage, unemployment taxes, social security taxes and income tax withholding (see Mass. Gen. L. c. 149, §148B on employee classification).

(b) A bid submitted by any general bidder or by any subcontractor under the general bidder that does not comply with any of the foregoing conditions for bidding shall be rejected, and no subcontract work outside the scope of Mass. Gen. L. c. 149, §44F shall be awarded to a subcontractor that does not comply with the foregoing conditions.

(c) All bidders and subcontractors under the bidder who are awarded or who otherwise obtain contracts on projects subject to Mass. Gen. L. c. 149, §44A(2) or c. 30, §39M shall comply with anyone of the obligations numbered 1 through 6 set forth in section (a) above for the entire duration of their work on the project, and an officer of each bidder or subcontractor under the bidder shall certify under oath and in writing on a weekly basis to the Purchasing Agent that they are in compliance with such obligations. Such certificate shall constitute a condition precedent to any payment obligation of the city.

(d) Any bidder or subcontractor under the bidder who fails to comply with any one of the obligations 1 through 6 as set forth in section (a) above for any period of time shall be, at the sole discretion of the City of Salem, subject to one or more of the following sanctions: (1) cessation of work on the

project until compliance is achieved; (2) withholding of payment due under any contract or subcontract until compliance achieved; (3) permanent removal from any further work on the project; (4) liquidated damages to the City of Salem in the amount of five percent (5%) of the dollar value of the contract.

(e) Any contractor or subcontractor that has been determined by the City of Salem or by any court or agency to have violated any of the obligations set forth in sections (a) and (c) above shall be barred from performing any work on any future projects for six months for a first violation, for three years for a second violation and permanently for a third violation.

(f) If any provision of this section, or application of such provision to any person or circumstances, shall be enjoined or held to be invalid, the remaining provisions of this section, or the application of such provisions to persons or circumstances, other than that which is enjoined or held invalid, shall not be affected thereby.

(g) The Purchasing Agent shall be the enforcement and compliance officer for these provisions. AU notices, records and/or other written verification of compliance shall be directed to the Purchasing Agent.

## **Sec. 2-183'2. Salem Area Resident Job Goals.**

(a). All bidders and subcontractors subject to the provisions of Section 2-1891 shall make a good faith effort on a craft by craft basis to provide at all times at least twenty percent (20%) of the total employee worker hours in each trade, at every tier, to be performed by bona fide residents of either the city of Salem or a city or town within ten (10) miles radius of the city limits of the city of Salem. For the purposes of this paragraph, work performed by apprenticeship and on-the-job training shall be included.

(b). Contractors shall submit to the Purchasing Agent workforce charts listing each of its workers and those of its subcontractors of all tiers, by name, residence, craft, job category and hours worked. Submission of said workforce charts shall constitute condition precedent to any payment obligation of the city.

(c). Any person who provides false information regarding his or her residential address, or in the case of a contractor or bidder who knowingly provides false information regarding address of any employee, shall be subject to a fine of three hundred dollars (\$300.00) for each violation.

(d). The Purchasing Agent shall establish criteria and procedures for compliance herewith, and shall report to the mayor and city council annually.

(e). Where the provision of any federal or state statute or regulation provide that no procedure or requirement shall be imposed which will operate to

discriminate against the employment of labor from any other state, possession or territory of the United States, the terms of this section shall not apply.

(t). If any provision of this section, or application of such provision to any person or circumstances, shall be enjoined or held to be invalid, the remaining provisions of this section, or the application of such provisions to persons or circumstances, other than that which is enjoined or held invalid, shall not be affected thereby.

## **DIVISION 3. PUBLIC CONSTRUCTION PROJECTS**

### **Sec. 2-1891. Conditions for Bidding on Public Construction Contracts**

**Purpose:** Whereas the City of Salem expends substantial municipal funds for public construction projects; a large portion of said money being derived from taxes paid by city residents; that accordingly it is in the public interest, health, welfare and safety to ensure that the employees on such projects are paid at the lawfully required wage rates, have been trained in a bona fide apprenticeship training program, have hospitalization and medical coverage, and are classified according to the law. Further, that in light of the economic loss to the city when bidders and subcontractors who perform work on public construction projects are not from the Salem area and/or do not hire workers from the Salem area, it is in the public interest to establish goals for the hiring of Salem residents on public construction projects, and it is found that these provisions will serve the public interest, health, welfare and safety as described hereinabove.

- (a) **On any public construction projects estimated to cost in excess of I TWO HUNDRED AND FIFTY THOUSAND DOLLARS (\$250,000.00)**, all bidders and subcontractors, including subcontractors that are not subject to Mass. Gen. L. c. 149, §44F, under the bidder for projects subject to Mass. Gen. L. c. 149, §44A(2) and Mass. Gen. L. c. 30, §39M, shall as a condition for bidding or for an award of a subcontract on a non-filed sub-bid work, verify under oath and in writing at the time of bidding that they comply with the following conditions for bidding or subcontracting and, for the duration of the project, shall comply with the following obligations, and such obligations hereby are incorporated by reference into the specifications for city construction projects:

(1) The bidder and subcontractors under the bidder must comply with the obligations established under Mass. Gen. L. c. 149 to pay the appropriate prevailing wage rates to their employees.

(2) The bidder and all subcontractors under the bidder must at the time of bidding maintain or participate in a bona fide apprentice training program as defined by Mass. Gen. L. c. 23, §§11 H & 111 for each apprenticeable trade or occupation represented in their workforce that is approved by the Division of Apprentice Training of the Department of Labor and Workforce Development and must register all apprentices with the Division and abide by the apprentice to journeyman ratio for each trade prescribed therein in the performance of any work on the project.

(3) The bidder and all subcontractors under the bidder must at the time of bidding furnish at their expense, hospitalization and medical benefits and/or coverage for all their mechanics and apprentices, teamsters, chauffeurs, and laborers (as those employee classifications are used in Mass. Gen. L. c. 149, §26) at least comparable in value and coverage to the hospitalization and medical benefits provided by the health and welfare plans in the applicable craft recognized by Mass. Gen. L. c. 149, §26 in establishing minimum wage rates.

(4) The bidder and all subcontractors under the bidder must maintain appropriate industrial accident insurance coverage for all the employees on the project in accordance with Mass. Gen. L. c. 152.

(5) The bidder and all subcontractors under the bidder must properly classify employees as employees rather than independent contractors and treat them accordingly for purpose of workers' compensation insurance coverage, unemployment taxes, social security taxes and income tax withholding (see Mass. Gen. L. c. 149, §1488 on employee classification).

(b) A bid submitted by any general bidder or by any subcontractor under the general bidder that does not comply with any of the foregoing conditions for bidding shall be rejected, and no subcontract work outside the scope of Mass. Gen. L. c. 149, §44F shall be awarded to a subcontractor that does not comply with the foregoing conditions.

(c) All bidders and subcontractors under the bidder who are awarded or who otherwise obtain contracts on projects subject to Mass. Gen. L. c. 149, §44A(2) or c. 30, §39M shall comply with any of the obligations numbered 1 through 6 set forth in section (a) above for the entire duration of their work on the project, and an officer of each bidder or subcontractor under the bidder shall certify under oath and in writing on a weekly basis to the Purchasing Agent that they are in compliance with such obligations.

Such certificate shall constitute a condition precedent to any payment obligation of the city.

(d) Any bidder or subcontractor under the bidder who fails to comply with any one of the obligations 1 through 6 as set forth in section (a) above for any period of time shall be, at the sole discretion of the City of Salem, subject to one or more of the following sanctions: (1) cessation of work on the project until compliance is achieved; (2) withholding of payment due under any contract or subcontract until compliance achieved; (3) permanent removal from any further work on the project; (4) liquidated damages to the City of Salem in the amount of five percent (5%) of the dollar value of the contract.

(e) Any contractor or subcontractor that has been determined by the City of Salem or by any court or agency to have violated any of the obligations set forth in sections (a) and (c) above shall be barred from performing any work on any future projects for six months for a first violation, for three years for a second violation and permanently for a third violation.

(f) If any provision of this section, or application of such provision to any person or circumstances, shall be enjoined or held to be invalid, the remaining provisions of this section, or the application of such provisions to persons or circumstances, other than that which is enjoined or held invalid, shall not be affected thereby.

(g) The Purchasing Agent shall be the enforcement and compliance officer for these provisions. All notices, records and/or other written verification of compliance shall be directed to the Purchasing Agent.

## **Sec. 2-1892. Salem Area Resident Job Goals.**

(a). All bidders and subcontractors subject to the provisions of Section 2-1891 shall make a good faith effort on a craft by craft basis to provide at all times at least twenty percent (20%) of the total employee worker hours in each trade, at every tier, to be performed by bona fide residents of either the city of Salem or a city or town within ten (10) miles radius of the city limits of the city of Salem. For the purposes of this paragraph, work performed by apprenticeship and on-the-job training shall be included.

(b). Contractors shall submit to the Purchasing Agent workforce charts listing each of its workers and those of its subcontractors of all tiers, by name, residence, craft, job category and hours worked. Submission of said workforce charts shall constitute condition precedent to any payment obligation of the city.

(c). Any person who provides false information regarding his or her residential address, or in the case of a contractor or bidder who knowingly provides false information regarding address of any employee, shall be subject to a fine of three hundred dollars (\$300.00) for each violation.

(d). The Purchasing Agent shall establish criteria and procedures for compliance herewith, and shall report to the mayor and city council annually.

(e). Where the provision of any federal or state statute or regulation provide that no procedure or requirement shall be imposed which will operate to discriminate against the employment of labor from any other state, possession or territory of the United States, the terms of this section shall not apply.

(f). If any provision of this section, or application of such provision to any person or circumstances, shall be enjoined or held to be invalid, the remaining provisions of this section, or the application of such provisions to persons or circumstances, other than that which is enjoined or held invalid, shall not be affected thereby.

**Section 2. This Ordinance shall take effect as provided by City Charter.**

In City Council July 11, 2002

Adopted for first passage by a roll call vote of 7 yeas, 0 nays, 2 absent.

Referred to the Committee on Ordinances, Licenses, and Legal Affairs

In City Council September 26, 2002

Adopted for second and final passage as amended by Committee

Approved by the Mayor on September 30, 2002

ATTEST:

DEBORAH E. BURKINSHAW  
CITY CLERK