

OVERVIEW OF NAFC'S ONLINE RESPONSIBLE BIDDER/ PREQUALIFICATION RESOURCE MANUAL

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One of the many functions of the National Alliance for Fair Contracting (NAFC) is to collect statutes, ordinances, and executive policies requiring awarding agencies to utilize responsible bidder and prequalification requirements in public construction contracting. NAFC has now organized these ordinances in an online Resource Manual along with material which fair contracting groups have used to encourage awarding agencies to adopt responsible bidder/prequalification laws. This overview describes some of the responsible contracting policies and laws contained in the *NAFC Online Responsible Bidder/Prequalification Resource Manual*.

In arguing for responsible bidder and prequalification requirements, fair contracting groups attempt to ensure, among other things, that contractors awarded public construction projects: 1) have a record of compliance with labor laws, including prevailing wage laws, OSHA, etc., 2) have a bona fide apprenticeship program and a record of compliance with apprenticeship hiring requirements and 3) provide health insurance.

Prequalification questionnaires may include inquiries on a wide range of issues, such as past performance records of the contractors (change orders, cost overruns, assessment of liquidated damages after completion of a public construction project, etc.), financial stability of the contractor (liens, prior bankruptcies, litigation, etc.), licensing requirements, safety records and violations, prior debarments or suspensions, and prior use of other business names.

Four important criteria often included in responsible bidder/prequalification laws include: 1) Bona Fide Apprenticeship Programs; 2) Health Benefits; 3) Compliance by Subcontractors; and 4) Past Performance, Safety, Financial Stability, etc. The following ordinances are representative examples of responsible bidder/prequalification ordinances with these four criteria:

1. California Department of Industrial Relations Model Pre-Qualification Form
2. Contractor's Qualification Statement of School Building Authority of West Virginia
3. Pennsylvania Department of Services' Qualification Statement
4. California Model Local Construction Apprentice Hiring Policy (five-year graduation requirement and local hiring)
5. Illinois Procurement Code
6. Illinois Ordinances
7. Washington Statute
8. City of Oregon, Ohio Ordinance
9. Massachusetts Ordinances
10. Manchester, New Hampshire Ordinance
11. Cranston, Rhode Island Ordinance

A. BONA FIDE APPRENTICESHIP PROGRAMS

Ideally, responsible contractor language should be written in a manner that ensures that contractors selected for public projects obtain apprentices from legitimate apprenticeship programs. A requirement of a contractor's "participation" in a registered program may not achieve this goal. Therefore, fair contracting groups often advocate responsible bidder requirements that require participation in a program with a proven track record of graduation; ratios; lack of prior violations; usage requirements and/or local hiring.

1. California Model Local Construction Apprentice Hiring Policy

"The apprenticeship program must have graduated apprentices annually for at least the past five (5) years. This requirement applies to any craft for which the State of California Department of Apprenticeship Standards has approved an apprenticeship program. A properly indentured apprentice will be employed under the regulations of the craft or trade at which he or she is indentured and shall be employed only at the work of the craft or trade in which he or she is registered."

2. California DIR's Model Pre-qualification Form, Question 38 (www.dir.ca.gov/od_pub/prequal/pubwksprequalmodel.doc) asks:¹

"At any time during the last five years, has your firm been found to have violated any provision of California apprenticeship law or regulations, or the laws pertaining to use of apprentices on public works?"

3. State of Washington, 39.04 RCW

This Washington statute provides that for "all public works estimated to cost one million dollars or more, all specifications shall require no less than fifteen percent of the labor be performed by apprentices." See attached statute for exceptions.

4. Illinois Procurement Code, 30 ILCS 500/30-22²

"The bidder and all bidder's subcontractors must participate in applicable apprenticeship and training programs approved by and registered with the United States Department of Labor's Bureau of Apprenticeship and Training."

¹ The California Department of Industrial Relations has developed a "model" pre-qualification system/questionnaire that is not mandatory. Public agencies are permitted to develop their own pre-qualification system/questionnaire so long as the procedural requirements of Public Contracts Code Section 20101 are included.

² In Illinois, the following are some of the numerous public bodies that have adopted responsible bidder ordinances: Bond County Board, Macon County Board, Sangamon County Board, Winnebago County Board, Marion County Board, City of Rockford, Springfield Sanitation District, Joliet Junior College, and many others listed in NAFC's Resource Manual.

5. Massachusetts -various towns and cities, including Amherst, Boston, Brockton, Cambridge, Fall River, New Bedford, Springfield, Waltham, Weymouth, Woburn, Worcester, and others³

“The bidder and all subcontractors under the bidder must maintain or participate in a bona fide apprentice training program as defined by c. 23, subsection 11H and 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 Industries and must abide by the apprentice to journeyman ratio for each trade prescribed therein in the performance of the contract.” [Some of the cities or towns have slight changes in wording in their ordinances. For example, the Springfield ordinance states “...shall use good faith best efforts to abide...”]

6. Massachusetts, City of Everett (City of Malden’s ordinance is similar except, Among other things, that apprentices need not be residents of the city)⁴

“On any public contraction project, as defined herein, the worker hours on a craft by craft basis shall be performed as follows:

At least thirty-five (35%) percent of the total employee man hours per trade shall be performed by bona fide Everett residents five (5%) percent of which shall be performed by apprentices indentured to a bona fide apprenticeship program approved by the Commonwealth of Massachusetts.” [Also requires that minorities and women perform a specified percentage of the total hours.]

7. Manchester, New Hampshire

“All contractors must maintain or participate in a bona fide apprentice-training program for each apprenticeable trade or occupation represented in their workforce.”

“At the time of bidding all contractors must furnish written proof of their maintenance or participation in an apprenticeship program, and of their provision of health and hospitalization benefits and workers compensation insurance as described above.”

³ The following Massachusetts towns and cities have adopted responsible bidder provisions: Amherst, Boston, Braintree, Brockton, Cambridge, Chelsea, Everett, Fall River, Lawrence, Lowell, Lynn, Malden, New Bedford, Quincy, Plymouth, Revere, Salem, Springfield, Waltham, Weymouth, Woburn, Worcester.

⁴ Other Massachusetts towns and cities, such as Boston and Springfield, have local hiring requirements that are separate from the apprenticeship requirements.

8. Cranston, Rhode Island

“Each bidder with 5 or more employees shall maintain or participate in a bona fide apprentice-training program as defined by R.I. Gen. Laws § 28-46-1 et seq. for each applicable trade or occupation represented in their workforce, shall ensure that such apprentice-training program is approved by the Apprenticeship Council of the Department of Labor and must abide by the apprentice to journeymen ratio for each trade prescribed therein in the performance of the contract.”

9. City of Oregon Ohio, Oregon Municipal Code 180.01 (Ordinance 204-2002) requires that bid submission on public works include:

“A statement on staffing capabilities, including labor sources; staffing plans which verify the bidder’s ability to comply with the ratio requirements set forth on the prevailing wage rate schedule attached to the bid specifications; and confirmation that all apprentices to be used on the project are registered with an apprenticeship training program approved by the State of Ohio or United States Department of Labor, Bureau of Apprenticeship and Training.”

10. Contractor’s Qualification Statement of School Building Authority of West Virginia (www.wvs.state.wv.us/wvsba)

“Please provide information regarding your company’s and subcontractor’s participation in a bona fide apprenticeship program that is approved by the U.S. Department of Labor, U.S. Bureau of Apprenticeship Training and is administered in compliance with the rules and regulations of the WV Department of Labor.”

B. HEALTH BENEFITS

1. Illinois Ordinances

“Compliance with all provisions of the Illinois Prevailing Wage Act, including wages, medical and hospitalization insurance and retirement for those trades as covered in the Act.”

2. Cranston, Rhode Island

“Each bidder must provide or make available hospitalization and medical benefits for all their employees employed on the project and/or coverage at least comparable to the hospitalization and medical benefits provided by health and welfare plans in the applicable craft recognized and utilized by the Director of the Rhode Island Department of Labor and Training in establishing prevailing wage rates.”

3. City of Oregon, Ohio

“[V]erification as to whether the construction workers on the job are entitled to hospitalization and retirement benefits; and, verification as to whether bidder maintains a substance abuse policy that governs all employees on the project;”

4. Massachusetts, various towns and cities, including Amherst, Boston, Cambridge, Fall River, Springfield, Waltham, Weymouth, Woburn, Worcester, and others

“The bidder and all subcontractors under the bidder must furnish, at their expense, hospitalization and medical benefits for all their employees on the project and/or coverage at least comparable in value to the hospitalization and medical benefits provided by the health and welfare plans in the applicable craft recognized by M.G.L. c. 149, § 26 in establishing minimum wage rates.”⁵

5. Manchester, New Hampshire

“All contractors must furnish comprehensive health and hospitalization benefits for their employees and their families.”

C. COMPLIANCE BY SUBCONTRACTORS

1. City of Oregon, Ohio

“It is the sole responsibility of the potential bidder to comply with all submission requirements including all information on the bidder’s subcontractors, signed and notarized, no later than the public bid opening. Submissions deemed inadequate or incomplete by the Public Service Director may result in automatic disqualification of the bid.”

“Any undisclosed sub-contractors hired after an award is made to a pre-qualified general contractor must submit all information required herein to the Public Service Director at least ten (10) days prior to the date the sub-contractor is set to commence work on-site. No sub-contractor the value of whose work exceeds \$15,000.00 can work on any City of Oregon public improvement project unless all submission requirements set forth herein are timely met and they are deemed to be ‘qualified’ by the Public Service Director.”

⁵ The Amherst ordinance adds that: “The cost of the provision of such benefits shall be treated in accordance with the prevailing wage law.”

2. Pennsylvania Department of General Services – Qualifications Statement

The subcontractor pre-listing requirements in Department of General Services' qualification statement are as follows:

With subcontracts equal to or over \$50,000, the prime contractor must:
1) identify the name of the subcontractor, type of work, and percentage of total work that the subcontractors will perform. With subcontracts equal to or over \$100,000, the prime contractor must meet the same requirements for subcontracts equal to or over \$50,000, provide certified "Qualification Statements", and detailed resumes for the project manager and field supervisor. Additionally, there can be no substitution of pre-listed substitutes without Department of General Services authorization.

D. PAST PERFORMANCE, SAFETY, FINANCIAL STABILITY, ETC.

The prequalification questionnaires of the Pennsylvania Department of General Services; the Contractor's Qualification Statement of School Building Authority of West Virginia; the questionnaire of the City of Oregon and California's model questionnaire (available on the Department of Industrial Services' website) include a wide range of questions on a variety of matters, including past performance, safety, financial stability, compliance with prevailing wage law, and other topics.

An example of a prequalification inquiry that addresses past performance is included in the Contractor's Qualification Statement of School Building Authority of West Virginia. That qualification statement requires disclosure of "each instance within the last five (5) years where change orders applied for during construction amounted in the aggregate to more than five percent (5%) of the contract price for any building which your firm constructed, or in which actual construction costs exceeded the contract price by more than five percent (5%)."

E. ORGANIZATION OF THE NAFC ONLINE RESPONSIBLE BIDDER/PREQUALIFICATION RESOURCE MANUAL

Awarding agencies have adopted a wide spectrum of responsible bidder and prequalification ordinances, ranging from a few paragraphs long to multiple pages of requirements. Some contain two or three criteria; others contain many. In order to present the range of ordinances, NAFC's Resource Manual has organized its collection so that it may be reviewed in two ways: first, it presents various ordinances highlighting different types of criteria, and, second, ordinances can be searched on a state - by - state basis.

The topics included in the *NAFC Online Responsible Bidder/Prequalification Resource Manual* are: Overview of Responsible Bidder/Prequalification Ordinances; Making The Case For Responsible Bidder/ Prequalification Ordinances To Awarding Agencies; Sample Criteria In Responsible Bidder/Prequalification Ordinances (including Apprenticeship, Training & Skill Requirements; Medical and Retirement Coverage Requirements; Local Hiring Preferences & Affirmative Action Requirements; Past Compliance With State & Federal Prevailing Wage Laws and Other Applicable Laws; Subcontractor Requirements; Prior Performance Record; Financial Stability &

Business Integrity; Insurance, Bonds, Licensing & Certification Requirements and Drug & Safety Program Requirements).

The Online Resource Manual also includes Responsible Bidder/Prequalification Applications and Questionnaires and a section on Enforcement, Penalties & Sanctions in Responsible Bidder/Prequalification Ordinances