

Ordinance 0012-23 – Racine Works Program

An ordinance to amend Chapter 2, Article III, Division 8, Section 2-263, and Chapter 46, Article II, Section 46-41 of the Municipal Code of the City of Racine, Wisconsin.

The Common Council of the City of Racine, Wisconsin, do ordain as follows:

Part 1: Chapter 2, Article III, Division 8, Section 2-263(f), Due Process Board, is created as follows:

(f) Conduct hearings on an appeal filed by a contractor adversely affected by the decision of the public works and services committee or the waterworks commission under section 46-61(g)(2). After such hearing, the due process board may either affirm or reverse the decision of the public works and services committee or the waterworks commission.

Part 2: Chapter 46, Article II, Section 46-41 of the Municipal Code of the City of Racine is repealed and recreated as follows:

(a) *Purpose.* U.S. Department of Labor statistics show that the unemployment rate in the city of Racine is one of the highest in the state and is consistently higher than other parts of the State of Wisconsin. The City of Racine Common Council finds that the high unemployment rate, especially among low-and moderate-income groups, has a substantial adverse impact on the social and economic fiber of the entire community. The Racine Works Program is designed and intended to reduce unemployment by creating work opportunities for Racine residents and by retaining current jobs of residents through imposition of a requirement that, for certain public works contracts, a designated percent of project hours worked under the contract be performed by qualified low-income Racine residents with a certification. Through targeted strategies to include more city residents in city funded projects, the objective of the Racine Works Program is to support more families joining the middle class.

(b) *Definitions.* The following words and phrases have the meaning indicated for this section:

Apprenticeship program means a Class A Apprenticeship Program that is currently approved by the U.S. Department of Labor or a state apprenticeship agency and has graduated apprentices to journeyman status for three years. In addition, a new apprenticeship program that has been registered with the federal or state government within the last three years will be considered a Class A Apprenticeship Program, provided that such new program graduates to journeyman status within the indenture period and has a bonafide training program.

Certification means a participant having qualified as an eligible resident as determined by the purchasing agent.

Direct financial assistance means the value of below-market land sales, any direct subsidies to developers, and city expenditures for private improvements, with a combined value of \$1,000,000.00 or more, as determined by the director of city development, targeted

specifically to a project. It includes the value of tax increment financing and below-market-rate loans provided by the city.

Eligible resident means an individual who resides in the city of Racine, Wisconsin, for contracts awarded by the city, or an individual who resides in a municipality served by the water utility for water utility contracts, and who meet the underemployed or income limit requirements as set forth below. City residency for eligibility shall be maintained for the life of the resident's certification. Such residents shall have completed at a minimum a pre-apprenticeship program geared toward a specific trade. Residents who possess an apprenticeship or journeyman status shall also be eligible provided their current income status makes them eligible.

To be eligible and receive certification to participate under this section, the resident new applicant or inactive employee must be:

- Underemployed: having worked 1,200 or less in the preceding 12 months from the date of application, or
- Underemployed as meeting income eligibility guidelines pursuant to the HUD income limits for low- and/or very low-income households as not exceeding 80-percent of county median income.

Once certified, that certification shall be valid if the participant continues to maintain residency in the city of Racine.

Other resident means an individual who resides in the city of Racine, Wisconsin, for contracts awarded by the city, or an individual who resides in a municipality served by the water utility for water utility contracts, who does not meet the underemployed or income limit requirements as set forth for eligible residents.

Racine Works Program (RWP) means the residents' preference program created and implemented in this section.

Resident means a person who resides in the city of Racine, Wisconsin. Residency may be demonstrated by tendering two of the following items or copies as proof:

- (1) Voter's certification form;
- (2) Internal Revenue Service, Form 1040, from the prior tax year;
- (3) Current Wisconsin Driver's license or State Identification card; or
- (4) Utility bill, lease, property tax bill, or other government or business document with name and address.

Qualified low-income Racine resident means a person who resides in the city of Racine, Wisconsin, who meets income eligibility guidelines pursuant to the HUD income limits for low- and/or very low-income households as not exceeding 80-percent of county median income, and who has completed or maintains a pre-apprenticeship, apprenticeship, or journeyman program or status in a particular trade such as carpentry, cement finishing, iron worker, plumbing, electrical, and similar trades.

Qualifying contract means a contract that is in an amount greater than \$100,000.00 and paid by city-source funds for city public works contracts or by water utility funds for water

utility contracts, and is (1) a public works contract, as defined in Wis. Stats. § 66.0901(1)(c), awarded by the city or its water utility; or (2) a contract for site preparation, including, but not limited to, razing of buildings, filling, grading, and other similar work; or (3) a construction contract or contract for site preparation awarded by a developer for a development that received direct financial assistance from the city or from the community development authority. A contract shall constitute a qualifying contract irrespective of the funding source to the fullest extent possible considering the requirements of state and federal law.

Qualifying work means all labor, including skilled and non-skilled labor, and including but not limited to, general laborer, labor performed in journeyman, sub-journey, pre-apprenticeship, apprenticeship, and on-the-job training programs.

Worker hours means the total hours qualifying work performed pursuant to a qualifying contract, whether those workers are employed by the contractor or any subcontractor. In determining the total worker hours to be furnished at a construction site, the number of hours devoted to all tasks customarily performed on a construction site shall be included, whether or not such tasks are performed on the construction site. Worker hours includes work performed by persons filling apprenticeships and participating in on-the-job training programs and work performed by supervisors and superintendents on job sites who are not hourly wage workers.

(c) *Applicability; exceptions.* RWP applies to all qualifying contracts, excepting that in exceptional circumstances and where substantial grounds exist to exempt a contract from RWP, such contracts may be exempted from RWP requirements.

Any exceptions under this subsection require compliance with the following procedure:

- The bidding contractor requesting an exception shall submit a written proposal identifying the exceptional circumstances, and substantial grounds as the basis for the exception. Substantial grounds may include a contract or project requiring special skill or experience.
- The written proposal shall be submitted to the mayor and city administrator for consideration.

(d) *Worker hours requirement.* Contractors performing work under a non-exempt qualifying contract shall either:

- employ or ensure employment of eligible residents in the work under such contract and subcontracts to the extent that eligible residents perform qualifying work in the amount of no less than 20 percent of the total project worker hours; or
- employ or ensure employment of eligible employees to perform qualifying work for at least 15 percent but less than 20 percent of the total project worker hours *and* employ or ensure employment of other residents to perform qualifying work in the following ratio of eligible residents to other residents in the work under such contract and subcontracts:

Eligible Residents

15 percent*

Other Residents

10 percent*

16 percent*	8 percent*
17 percent*	6 percent*
18 percent*	4 percent*
19 percent*	2 percent*

* Percentage of the total project worker hours

For example, if a contractor employs eligible residents to perform qualifying work in 15 percent of the total project worker hours, the contractor must employ other residents in the work under such contract and subcontracts to the extent that such other residents perform qualifying work in an additional amount of no less than 10 percent of the total project worker hours.

- (e) *Verification; documentation.* The contractor shall submit a monthly workforce participation report. Such report shall include the name, street address, municipality of residence, race, gender, and total hours worked of each employee used for the contract, including such records of subcontractors for work under subcontracts. All reports and documents regarding workforce participation shall be submitted to the city purchasing agent. At the completion of the contract and before final payment under the contract, the contractor shall certify by affidavit whether it has complied with the RWP to the city purchasing agent. Contractors shall maintain personnel records listing the name, address, race, and gender of each employee used for the contract as well as payroll records that provide information from which compliance with RWP requirements can be determined, including such records of subcontractors for work of eligible residents under the subcontract. The contractor shall provide such documents to city upon reasonable notice during the pendency of the contract and shall maintain such payroll records for a period of at least three years after city's final payment under the contract. Contractors and subcontractors shall permit a city representative to engage in on-the-job interviews with employees to assist in determining compliance with RWP.
- (f) *Administration.* RWP shall be administered by the city purchasing agent, or other city employee as designated by the purchasing agent, who shall provide prospective contractors with information regarding RWP, with forms required for compliance certification, who shall also determine compliance with RWP requirements. The city purchasing agent shall, on an annual basis, provide the common council with information regarding RWP and the common council shall review the program and determine whether to enact revisions to RWP.
- (g) *Prohibition and penalty.* No contractor or agent thereof shall fail to comply with the worker hours requirement under paragraph (d), above.
 - (1) Upon failure of a contractor or agent to timely submit any monthly workforce participation report or the required final affidavit required under paragraph (e), above, the city, for contracts paid by city-source funds, or the water department, for contracts paid by water utility funds, may withhold payment and such contractor or agent shall be prohibited from bidding on any qualifying contract until such report or affidavit is submitted.

- (2) Upon failure of a contractor to comply with the worker hour requirements under paragraph (d), above, such failure shall be considered by the public works and services committee for contracts paid by city-source funds or by the waterworks commission for contracts paid by water utility funds at the time the contract is considered for final payment. Upon demonstration by the purchasing agent or the general manager of the water department that the contractor has failed to comply with such worker hour requirements, for such failure the public works and services committee or the waterworks commission shall reduce the final payment for such contract by \$10,000.00, or two and one-half percent of the total cost of the qualifying contract as awarded, whichever is greater. The purchasing agent or the general manager of the water department, as appropriate, shall provide written notice to the contractor within ten days of the decision of the public works and services committee or the waterworks commission.
- (3) A contractor may appeal the decision of the public works and services committee or the waterworks commission under subparagraph (2), above, within ten days from the date of the notice.
 - a. The appeal shall be in writing and must be delivered to purchasing agent or the general manager of the water department, who issued the notice, or their designee as indicated in the notice. As soon as practicable thereafter, but not more than 30 days from the date of the written appeal, the due process board shall hear the appeal and allow the contractor an opportunity to present evidence as to why the contractor did not fail to comply with the worker hour requirements under paragraph (d), above.
 - b. Within ten days after the appeal is heard, the contractor shall be notified in writing of the board's decision to either affirm or reverse the decision of the public works and services committee or the waterworks commission. Any contractor adversely affected by a decision of the due process board in this respect may seek review by filing a petition in circuit court within 30 days of the date of the decision or be forever barred.
 - c. For purposes of this section, the city elects not to be bound by Wis. Stats. ch. 68 with respect to administrative procedure.

Following the expiration of any period for appeal, or following the completion of any appeal, any penalty assessed under paragraph(g)(2) shall be allocated to support pre-apprenticeship programs associated with this RWP.

- (h) *Debarment.* If after recommendation of the public works and services committee or the waterworks commission, the due process board determines that a contractor or agent thereof has failed to comply with the worker hour requirements under paragraph (d), above, the common council, for city-source funded contracts, and the waterworks commission, for water utility contracts, may not award any contract to such person unless otherwise recommended by the public works and services committee and approved by the common council or recommended by such general manager and approved by the water works commission, respectively, or unless three years have elapsed from the date the due process board made its determination, or three years have

elapsed from the date of final determination by a court of competent jurisdiction that is adverse to the contractor, whichever is later.

Part 3: This ordinance shall take effect upon passage by a majority vote of the members-elect of the City of Racine Common Council and publication or posting as required by law.

Fiscal Note: N/A

Pursuant to Wisconsin Statutes section 62.09(8)(c), the mayor shall have the veto power as to all acts of the common council, except such as to which it is expressly or by necessary implication otherwise provided. All such acts shall be submitted to the mayor by the clerk and shall be in force upon approval evidenced by the mayor's signature, or upon failing to approve or disapprove within five days, which fact shall be certified thereon by the clerk. If the mayor disapproves the mayor's objections shall be filed with the clerk, who shall present them to the council at its next meeting. A two-thirds vote of all the members of the council shall then make the act effective notwithstanding the objections of the mayor.