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References Smith, Louis

Skilled Trade Protections for Bond-Funded Construction Contracts

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PURPOSE:

To mandate certain protections for skilled trade workers in construction contracts funded by bonds approved in accordance with Chapter 1251 of the Texas Government Code.

POLICY STATEMENT:

All solicitations and contracts for construction projects meeting the applicability requirements set forth herein shall include provisions mandating: (1) a minimum of either a \$15/hour wage or a wage that meets the requirements of the Davis-Bacon Act, whichever is higher; (2) a minimum of 10% of total project hours be completed by individuals enrolled or graduated from an approved apprenticeship training program; and (3) the usage and tracking of employer safety records, including OSHA Safety Training of every individual who works on the job site.

POLICY ELABORATIONS :

I. DEFINITIONS

- A. **Apprentice.** (i) A person enrolled in or a graduate of a bona fide Apprenticeship Program as defined by this policy or (ii) a person in the first 90 days of probationary employment as an apprentice in such an Apprenticeship Program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice or (iii) a person enrolled or a graduate of a DOL certified Bilingual Training Program.

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- B. **Apprenticeship Program.** (i) A program registered with the U.S. Department of Labor (DOL), Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services (OA), or (ii) an OA-Certified Bilingual Craft Training Program.

- C. **Bond Contract.** A contract that meets the requirements of Section II.A. of this policy.

- D. **Contractor.** The company who submits a bid or proposal and is awarded as the prime contractor on a Bond Contract.

- E. **Davis-Bacon Act.** The Davis-Bacon Act of 1931, currently codified in 40 U.S.C §§ 3141 *et seq.*

- F. **Project.** The construction project set forth in the Bond Contract.

- G. **Subcontractor.** A company that has been awarded by the Contractor to perform part of the work or services of an existing Bond Contract between the Contractor and Harris Health.

- H. **Total Project Hours.** The total labor hours performed by Workers on a Project. Includes all hours worked by the Contractor and all Subcontractors on the Project, including all Subcontracts no matter their contract value. Excludes hours worked by foremen, superintendents, supervisors, and owners.

- I. **Worker.** Individuals performing work on a Bond Contract as a trade worker or laborer, and as

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further defined and limited according to the Davis-Bacon Act (40 U.S.C §§ 3141 *et seq.*) This term includes full-time, part-time, temporary, and seasonal employees who are directly assigned to a Project, whether the work is performed on-site or off-site.

II. SCOPE AND APPLICABILITY:

A. **Bond Contracts.** This policy applies to all contracts that (1) are funded through the use of any proceeds from bonds approved in accordance with Chapter 1251 of the Texas Government Code; (2) are procured by Harris Health under Chapter 2269 of the Texas Government Code; (3) have a total contract value of at least \$10,000,000; and (4) are not exempted by this Section.

The following types of contracts are exempt from this policy:

1. Services procured under Texas Government Code § 2254 (Professional and Consulting Services); or
 2. Contracts for purchases of goods and services considered to be ancillary to the construction services. A business entity that only supplies goods (bricks, supplies, tools, etc.,) and such transportation services as may be incident to delivering those goods to Harris Health property (including the use of common carriers (e.g., truck drivers)) are considered a "Supplier" and Suppliers are not subject to this policy.
- B. This policy does not limit, or impact in any way, Harris Health's ability to consider in the manner it deems appropriate any relevant factor specifically listed in any particular request for bids, proposals, or qualifications.
- C. This policy is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against Harris Health, its departments, agencies, entities, officers, employees, agents, or any other person.

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- D. Except where specifically noted otherwise within this Policy, the requirements of this policy apply to all Workers on a Project, whether or not the work is completed as an independent contractor or under an employment contract with the Contractor or a Subcontractor.

III. GENERAL REQUIREMENTS

Wage Requirements

- A. Each Worker on a Project shall receive a minimum of either \$15 per hour wage or a wage that meets the requirements of the Davis-Bacon Act, whichever is higher.
- B. Harris Health shall follow the guidelines of the Davis-Bacon Act in regards to all relevant issues regarding worker classifications, wage determinations, compliance monitoring, enforcement and other rules related to questions and determinations in this policy.
- C. Harris Health shall use the Harris County Building Construction Prevailing Wage Rates for the quarter in which a Project is advertised.

IV. RESPONSIBILITIES

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A. Wage Rate Compliance

1. Harris County Purchasing Agent shall include, within each solicitation for a Project, the Harris County Building Construction Prevailing Wage Rates for the quarter in which a Project is advertised.
2. Facilities Construction & Systems Engineering, or its representative, shall ensure Contractor and Subcontractor compliance with the Davis-Bacon Act.

B. Apprenticeship Requirements.

1. Harris County Purchasing Agent shall:
 - a. Include, within each solicitation for a Bond Contract, the apprenticeship certification form prepared according to this policy;
 - b. Review bids and proposals for document submission consistent with this policy; and
 - c. Declare non-responsive any bid or proposal that does not meet the requirements of this policy.
2. Facilities Construction & Systems Engineering, or its representative, shall:
 - a. With support from the Harris County Attorney's Office, prepare forms for Contractors to submit with their bid proposals and monthly pay applications to ensure compliance with the Apprenticeship Requirements of this policy;
 - b. Review each monthly pay application submitted by Contractors for
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 - c. Review and respond to Contractors' written requests described in Sections III.B.5-6 of this policy, and keep a record of these decisions and responses in the Project files; and

- d. Prepare monthly reports of Total Project Hours on all Projects and the current and projected percentage of Apprentice hours worked.

C. Worker Safety Requirements

1. Harris County Purchasing Agent shall:

- a. Include, within each solicitation for a Project, the certification form prepared according to this policy;
- b. Review bids and proposals for document submission consistent with this

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policy; and

- c. Declare non-responsive any bid or proposal that does not meet the requirements of this policy.

2. Facilities Construction & Systems Engineering, or its representative, shall:

- a. With support from the Harris County Attorney's Office, prepare forms for Contractors and Subcontractors to submit with their bid proposals and monthly pay applications to ensure compliance with the Worker Safety Requirements of this policy;
- b. Review each monthly pay application submitted by Contractors for compliance with the Worker Safety Requirements of this policy; and
- c. Receive and address complaints regarding failures to comply with the Worker Safety Requirements of this policy.

V. ENFORCEMENT AND NON-COMPLIANCE

- A. A bid or proposal will be deemed non-responsive if every question on the safety record questionnaire is not marked "True" or if a response to a question in the safety record questionnaire is found to be false.
- B. Harris Health may conduct compliance reviews before the award of a Bond Contract or whenever it deems it necessary after the award.
- C. A Contractor found to have violated the requirements of this Policy during the term of the Bond Contract, shall be subject to:

1. Negative impact on submissions of future Harris Health solicitations and possibly denial of award of a contract, including non-Bond Contracts;

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2. Probation, suspension, or debarment for a period of time determined in the sole discretion of Harris Health.

D. A Contractor or Subcontractor may appeal a finding of a violation under this Policy to the Senior Vice President of Harris Health's Facilities Construction & Systems Engineering Department.

REFERENCES/BIBLIOGRAPHY:

OSHA Post-Citation Procedures and Abatement Verification. <https://www.osha.gov/enforcement/directives/cpl-02-00-163/chapter-7#:~:text=Violation,.Penalties>

Harris Health System Board of Trustees Resolution No. 23.04-49

Occupational Safety & Health Administration [OSHA]. (1998). Abatement verification (29 CFR 1903.19).

US Department of Labor Apprenticeship website:
<https://www.dol.gov/general/topic/training/>

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[apprenticeship](#)

29 U.S.C. §50. Promotion of Labor Standards of Apprenticeship.

29 CFR 29. Labor Standards for the Registration of Apprenticeship Programs.

OFFICE OF PRIMARY RESPONSIBILITY:

Facilities Construction & Systems Engineering

*This policy was approved by the Board of Trustees on September 28, 2023 with Board Motion No. 23.09-143

Attachments

Policy_Bond Construction Requirements (23HSP0448)_01022024.pdf

Policy_Bond Construction Requirements (23HSP0448)_090123.docx

Approval Signatures

Step Description Approver Date

Executive Owner Louis Smith: Executive Owner 11/26/2024 Policy Owner Chip

Whitten: Document Owner 11/26/2024

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Approval for Expedited Review Laurabeth 11/26/2024
Gonzalez: Document Owner [LB]

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