

Legislation Text

File #: 2017-0450, **Version:** 3

AN ORDINANCE relating to county public works projects; creating a county priority hire program; authorizing the finance and business operations division of the department of executive services to implement and administer the priority hire program; incorporating reporting for the priority hire program into the Contracting Opportunities Program Report and the Apprenticeship Annual Report; amending Ordinance 17652, Section 16, as amended, and K.C.C. 2.97.090; amending Ordinance 12787, Section 6, as amended, and K.C.C. 12.16.175 and adding a new chapter to K.C.C. Title 12.

PREAMBLE:

1. A priority hire program is designed to prioritize the recruitment and placement of economically disadvantaged local workers on designated King County public works projects. The program is intended to help address construction workforce shortages, diversify the construction workforce and improve the well-being of individuals who live in geographic areas of economic distress.
2. The priority hire program focuses on workforce participation by apprentices and journey level construction workers and is therefore directly connected to the county's existing apprenticeship program. King County is committed to achieving its apprenticeship hiring goals set in county policy and remedying the disproportionately low involvement by minority groups and women in the construction workforce.
3. This ordinance builds on the vision from Ordinance 17973, adopted in February 2015, that created an economic opportunity and empowerment program and advisory board for the Children and Family

Justice Center. The advisory board developed a general plan and recommendations that provide a framework for implementing a priority hire program, as well as providing support for apprentices and small business participation.

4. A priority hire program is aligned with actions in King County's 2016 equity and social justice strategic plan, co-created with employees and community partners. Priority hiring expands opportunities for disadvantaged populations and ensures that county public works projects are planned and implemented in a way that improves equity in local communities.

5. In 2016, the county published the results of two commissioned studies documenting construction workforce shortages and identifying economically distressed areas. The first study, completed in January 2016, is titled Construction Workforce Analysis for King County and the Region, and estimates a gap of four thousand six hundred workers by 2020 between the demand for construction labor and the supply of skilled trade workers in the regional labor market. The study also uses economic data involving poverty levels, employment and educational attainment to determine economically distressed areas, which are identified by ZIP code. The second study, completed in December 2016, is titled Construction Occupational Demand Analysis and Construction Priority Hire Analysis. The study uses more recent economic data to update the list of economically distressed ZIP codes in anticipation of several large wastewater construction projects. Because the county's wastewater service area includes portions of Snohomish and Pierce counties, the analysis was expanded beyond King County's boundaries to include ZIP codes from these two other counties that border King County.

6. In May 2016, the executive directed county agencies to implement a priority hire pilot program to prioritize economically disadvantaged local workers for inclusion on large King County capital construction projects that were twenty-five million dollars or more. The county has initiated the priority hire pilot program for three large construction projects: Georgetown wet weather treatment station; the Sunset Heathfield pump station; and the Cedar Hills regional landfill area 7 and 8 closure project. The executive has also recommended transitioning the priority hire pilot program into a long-term county program.

7. For each of the priority hire pilot program projects, a community workforce agreement has been successfully negotiated between King County and labor unions representing trades workers. A community workforce agreement is a project labor agreement with targeted priority hiring requirements. A community workforce agreement has proven to be an effective tool to provide needed economic investment in traditionally disadvantaged communities and to manage public works projects in a way that reduces the risk of project delays, reduces labor disruptions and labor shortages, improves job-site safety, creates local jobs, and enhances workforce diversity.
8. In 2017, a regional public owners group, comprised of staff from King County, Sound Transit, the Port of Seattle, the city of Seattle and other entities estimated there will be over sixty-seven billion dollars in public construction projects by 2042 with over seventy million labor hours needed to fulfill this demand for projects. This growing demand for public infrastructure projects creates a compelling need for a permanent King County priority hire program.
9. Based on the commissioned studies, the King County region has geographic areas of economic distress as evidenced by factors including poverty levels, concentrated unemployment and gaps in educational attainment. The council seeks to act effectively and expeditiously to encourage solutions that will benefit disadvantaged communities and result in economic growth and job creation in areas of King County, and, for wastewater projects, in areas of Snohomish County and Pierce County that border King County, that are defined in the commissioned studies as economically distressed.
10. King County has taken a community-based approach to achieve more equitable community conditions through the communities of opportunity program. This program, which grew from King County's equity and social justice strategic plan, seeks to achieve affordable housing, local employment and quality education through community-led strategies and solutions. A priority hire program that is based on geographic areas of economic distress would enhance this place-based approach to increased economic opportunity.
11. Based on the commissioned studies, recommendations of the economic opportunity and empowerment program advisory board and input from community stakeholders, it is in the best interest

of the county to increase the supply of qualified construction workers via a priority hire program, particularly the supply of workers who have been historically underrepresented in the construction industry, including minorities, women, veterans and those who live in economically distressed areas of King County.

BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

SECTION 1. Sections 2 through 6 of this ordinance should constitute a new chapter in K.C.C. Title 12.

NEW SECTION. SECTION 2. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

A. "Apprentice" means a person who has signed a written apprenticeship agreement with and enrolled in an active state-registered apprenticeship training program approved by the Washington state Apprenticeship and Training Council.

B. "Apprenticeship training program" means an active program registered and in compliance with the Washington state Apprenticeship and Training Council as defined by chapter 49.04 RCW and WAC 296-05-011 and WAC 296-05-013.

C. "Community workforce agreement" means an executed agreement signed by the executive, or the executive's designee, on behalf of the county, and representatives of the Seattle-King County Building Trades Council, the Northwest National Construction Alliance II and other labor organizations, as applicable, for a covered project. The community workforce agreement is a project labor agreement for a single covered project that contains terms and conditions for priority hiring requirements.

D. "Contractor" means a person or business entity that enters into a contract with the county or that is a subcontractor performing services under such a contract. A contractor employs individuals to perform work on covered projects, including general contractors, subcontractors of all tiers and both union and nonunion entities.

E. "Covered project" means a county public works project with project construction costs estimated to equal fifteen million dollars or greater, and such other criteria established by the executive, upon enactment of this ordinance. This threshold of fifteen million dollars may be lowered to five million dollars by December 31, 2020, at the discretion of the executive.

F. "Division" means the department of executive services, finance and business operations division or its successor.

G. "Economically distressed area" means a geographic area within King County, defined by ZIP code, and found by the manager to be in the top thirty percent of all ZIP codes in King County in terms of the concentration of individuals who meet at least two of the following three criteria: have income at or below two hundred percent of the federal poverty level; are unemployed; or are at least twenty-five years old and without a college degree. The manager may add ZIP codes that meet this criteria for construction projects that are part of the county's wastewater service area in Pierce and Snohomish counties. Also, the manager may adjust the list of economically distressed areas within King County in order to enhance regional uniformity with other local jurisdictions implementing priority hire programs.

H. "Good faith efforts" means the strongest possible efforts that the contractor and its subcontractor can reasonably make to meet the established apprentice requirement, priority hiring requirement and other hiring goals.

I. "Helmets to Hardhats" means the nationwide program that is administered by the Center for Military Recruitment, Assessment and Veterans Employment, a nonprofit corporation that connects National Guard, Reserve, retired and transitioning active-duty military service members with skilled training and quality career opportunities in the construction industry.

J. "Journey level" means that an individual has sufficient skills and knowledge of an occupation, either through a formal apprenticeship training program or through practical on-the-job work experience, to be recognized by any combination of a state registration agency, a federal registration agency or an industry, as being fully qualified to perform the work of the occupation. To be "journey level," practical experience must be equal to or greater than the term of apprenticeship.

K. "Labor hours" means hours performed on covered projects by workers who are subject to prevailing wages under chapter 39.12 RCW.

L. "Manager" means the manager of the finance and business operations division, or its successor, or the manager's designee.

M. "Master community workforce agreement" means a standardized project labor agreement that would be anticipated to apply to all covered projects and sets forth terms and conditions for hiring requirements to include priority

hire workers, signed by the executive or the executive's designee on behalf of the county, and representatives of the Seattle-King County Building Trades Council, the Northwest National Construction Alliance II and other labor organizations, as applicable.

N. "Open shop contractor" means a contractor that is not a signatory to a collective bargaining agreement with a union representing the trade or trades of the contractor's workers, also known as a nonunion contractor.

O. "Pre-apprentice" means a student enrolled in a construction pre-apprenticeship training program that is recognized by the Washington state Apprenticeship and Training Council.

P. "Pre-apprentice graduate" means an individual who successfully completed a pre-apprenticeship training program and is readily available to enter an apprenticeship training program or has been accepted into an apprenticeship training program, including individuals who are completing the first or second year of apprenticeship training.

Q. "Pre-apprenticeship training program" means an education-based apprenticeship preparation program that is formally recognized by the Washington state Apprenticeship and Training Council and endorsed by one or more registered apprenticeship sponsors, with a focus on educating and training students to meet or exceed minimum qualifications for entry into an apprenticeship training program.

R. "Preferred entry" means a program provided as part of a project labor agreement or a community workforce agreement that allows pre-apprentice graduates and Helmets to Hardhats veterans, entry into an apprenticeship training program ahead of other applicants.

S. "Priority hire program" means a program implemented by King County that prioritizes the recruitment and placement of priority hire workers for training and employment in the construction trades on covered projects.

T. "Priority hire worker" means an individual prioritized for recruitment, training and employment opportunities because the individual is a resident in an economically distressed area.

U. "Project labor agreement" means an executed agreement between the executive or designee, on behalf of the county, and one or more labor unions that represent workers who typically perform on county public works projects, that provides standards for work hours, wages, working conditions, safety conditions, union representation, apprenticeship requirements and settlement of disputes procedures.

V. "Resident" means a person who provides evidence to the satisfaction of the manager demonstrating that the

person lives at a particular address.

W. "Small contractor and supplier" means a contractor that meets the eligibility criteria for King County's small contractor and supplier program under K.C.C. chapter 2.97 and is certified as a small contractor and supplier company in the online directory maintained by the business development and contract compliance section of the division.

X. "Union" means a representative labor organization whose members collectively bargain with employers to set the wages and working conditions in their respective trade or covered scope of work.

Y. "Women-owned or minority-owned business" means a business that has been certified by the state of Washington to be at least fifty-one-percent owned by either women or minority group members. For the purposes of this subsection, "minority" means African American/Black, Hispanic/Latino, Asian American, Pacific Islander, Native Hawaiian, Alaska Native or Native American.

NEW SECTION. SECTION 3. A. The priority hire program is hereby created.

B. The executive shall make a good faith effort to negotiate and execute a master community workforce agreement to streamline implementation of the priority hire program and promote efficiency and consistency in priority hire practices. The master community workforce agreement shall be used for all covered projects unless the master community workforce agreement is not executed or the executive determines that use of an individual community workforce agreement is more appropriate for a covered project. The master community workforce agreement shall:

1. Include terms and conditions for priority hire workers. The executive or designee shall determine the percentage of labor hours to be performed by priority hire workers in each contract for a covered project;
2. Require that twenty percent of apprentice labor hours on covered projects be performed by preferred entry candidates;
3. Include provisions to ensure a respectful workplace that is inclusive and focuses on nondiscrimination and antiharassment behaviors and provides procedures for workers to address concerns;
4. Include provisions to increase access for women-owned or minority-owned businesses, open shop contractors and small contractors and suppliers, and expand placements for both open shop and union apprentices;
5. Include provisions for the recruitment, retention and mentoring of construction workers, including priority hire workers and workers who reside in other areas of King County, as they advance from apprentice positions into

journey level positions;

6. Be structured so as to streamline paperwork and reporting requirements; and

7. Be signed by the executive or the executive's designee on behalf of the county, and representatives of the Seattle-King County Building Trades Council, the Northwest National Construction Alliance II and other labor organizations, as appropriate, before its implementation.

C. Before execution of the master community workforce agreement, the executive shall provide a copy of the master community workforce agreement in the form of a paper original and an electronic copy to the clerk of the council, who shall retain the original and provide an electronic copy to all councilmembers, the council chief of staff and the lead staff for the transportation, economy and environment committee, or its successor. The master community workforce agreement may then be executed, unless an ordinance rejecting it is introduced within thirty days of receipt of the electronic copy of the agreement and is enacted within seventy-five days of the introduction of the ordinance.

D. If the master community workforce agreement is not negotiated or executed, or if the executive determines that the use of the master community workforce agreement is not appropriate for a specific covered project, the executive is authorized to develop and execute a community workforce agreement specific to that project, which must contain terms and conditions for the use of priority hire workers and preferred entry workers, as well as provisions related to a respectful workplace and access for women-owned or minority-owned businesses, open shop contractors and small contractors and suppliers and to expand placements for both open shop and union apprentices.

E. Contractors who make public work bids on covered projects shall evidence good faith efforts that the contractor can reasonably make to meet any established apprentice requirements, priority hiring requirements and hiring goals including the percentage hour requirements that are consistent with the terms and conditions set forth in an applicable community workforce agreement or master community workforce agreement.

NEW SECTION. SECTION 4. A. To administer the priority hire program, the manager shall:

1. Analyze the indicators for economically distressed areas and prepare a list of ZIP codes that are found by the manager to be economically distressed areas and update that list at least once every five years. Any changes proposed by the manager to the criteria for determining economically distressed areas are subject to approval by ordinance;

2. Establish a methodology using data from local sources for determining the required percentage of labor hours

to be performed by priority hire workers on covered projects and review and adjust the methodology annually, as needed. The methodology for determining the required percentage of labor hours shall separately address apprentices and journey level workers on a contract-by-contract basis;

3. Partner with pre-apprenticeship or apprenticeship training programs to encourage programs, classes and curriculum that are intended to increase outreach, training, graduation, retention, and employment rates of women, racial minorities, other pre-apprentice program participants and priority hire workers;

4. Provide technical assistance to women-owned or minority-owned businesses, small contractor and supplier firms and open shop contractors on the recruitment and reporting requirements of the priority hire program to promote participation in the priority hire program;

5. Within one year after adoption of the master community workforce agreement, develop a pilot program to include as eligible for the priority hire program individuals who are being served by an organization that serves people who are living in poverty, unemployed or lacking educational opportunities;

6. Develop a prompt-payment program for subcontractors performing services for a contractor to lower the burden of participation in the priority hire program, based on an assessment of the effectiveness of existing payment programs. The prompt-payment program may include features such as a revolving fund or other mechanism to provide cash flow relief for payments to the union trust fund;

7. At least annually, determine whether the percentage of priority hiring requirements has been achieved by calculating the labor hours performed by residents of the state of Washington and separately calculate the labor hours performed by residents from states other than the state of Washington. Labor hours performed by residents from states other than the state of Washington shall be excluded from the total labor hours used to determine priority hire requirements;

8. Determine whether to waive or reduce priority hire requirements on covered projects. The circumstances for waiving or reducing the requirements must be justified in writing and may include but are not limited to reductions in construction worker availability due to economic downturn cycles, emergency projects or circumstances, sole source projects or federal funding restrictions. Any such waivers or reductions shall be documented in the report created in accordance with section 6 of this ordinance; and

9. Consult with a priority hire advisory committee as set forth in section 5 of this ordinance.

NEW SECTION. SECTION 5. A. The manager shall establish a priority hire advisory committee, consisting of eight to twelve members, to be appointed by the executive and confirmed by the council. A good faith effort shall be made to include representatives with experience in the construction industry from: contractors; the Associated General Contractors of Washington; labor union representatives; small contractor and supplier businesses; pre-apprentice and apprentice training providers; and local community or business organizations.

B. The committee shall operate in an advisory role to the county for implementation and effectiveness of this chapter. The committee shall advise the division on planning, input prior to the development of the master community workforce agreement, administration and reporting. The committee shall consult with the King County's immigrant and refugee commission, women's advisory board and communities of opportunity - best starts for kids advisory board to identify ways to recruit and retain people in apprenticeships who have historically not been involved in the construction trades or who are from economically disadvantaged communities or are immigrants or refugees. In addition, the committee shall advise the division on the program's performance in serving economically disadvantaged communities and the program's impacts on women-owned or minority-owned businesses, open shop contractors and small contractors and suppliers, and shall make recommendations, as necessary, to the division to make adjustments to the program to maximize its responsiveness to these communities. The manager shall assign at least one staff member from the division to support the work of the committee. The division shall convene the committee at least twice per year, and shall provide the committee with information regarding program performance. The committee shall make recommendations regarding program implementation and this information shall be incorporated into an appendix to the report created in accordance with section 6 of this ordinance. The committee shall also establish rules for its procedure.

C. The manager shall consult with the advisory committee regarding the methodology for determining the required percentage of labor hours to be performed by priority hire workers on covered projects; and the baseline percentages established for apprentices and journey workers. The manager shall also review with the advisory committee the annual labor hours performed by residents of states other than the state of Washington.

D. In lieu of establishing a priority hire advisory committee under subsection A. of this section, the manager may negotiate a memorandum of understanding, subject to approval by ordinance, with the city of Seattle or one or more other

government entities with priority hire programs in order to use a previously established or to jointly create a multijurisdictional priority hire advisory committee. The memorandum of understanding shall:

1. Provide a process for the contracted advisory committee to make recommendations regarding program implementation and this information shall be incorporated into an appendix to the report created in accordance with section 6 of this ordinance;
2. Provide a process for the manager to consult with the contracted advisory committee regarding the methodology for determining the required percentage of labor hours to be performed by priority hire workers on covered projects, as well as the baseline percentages established for apprentices and journey workers; and
3. Provide a process for the manager to review with the contracted advisory committee the annual labor hours performed by residents of states other than the state of Washington.

NEW SECTION. SECTION 6. A. The division shall establish performance benchmarks and metrics to evaluate the priority hire program.

B. The manager shall submit an annual report to the executive detailing performance of the program. The report shall be incorporated into the annual apprenticeship report required under K.C.C. 12.16.175. The report shall include, but not be limited to, the same performance measures for priority hire workers that are identified in K.C.C. 12.16.175 for apprentices.

C. The manager shall also submit an annual report to the executive detailing the barriers and impacts on women-owned and minority-owned businesses, open shop contractors and small contractors and suppliers when evaluating the priority hire program under section 6 of this ordinance. The report shall be incorporated into the annual contracting opportunities program report required under K.C.C. 2.97.090.

D. The executive shall review program results annually to determine if the program should be expanded or amended to meet the purpose of the program.

SECTION 7. Ordinance 17652, Section 16, and K.C.C. 2.97.090 are hereby amended to read as follows:

The manager shall by June 30 of every year, file, in the form of a paper original and an electronic copy

with the clerk of the council, who shall retain the original and provide an electronic copy to all councilmembers and the lead staff for the government accountability and oversight committee or its successor, a report to council on the progress of the program during the previous year, January through December. The report shall include:

A. The total amounts awarded by contract category, identifying contracts completed for covered projects under the priority hire program under K.C.C. chapter 12.XX (the chapter created under section 1 of this ordinance);

B. The total amount awarded by contract category for which an incentive was available;

C. The total amounts awarded to small contractors and suppliers reported by contract category and by race and gender, to the extent businesses voluntarily provide this race and gender information;

D. For goods and services contracts, the total amount awarded to small contractors and suppliers by race and gender to the extent businesses voluntarily provide this race and gender information, for those contractors for which the small contractor or supplier was not the low bidder;

E. For goods and services, the total amount paid by the county;

F. A listing of all participating small contractors and suppliers by contract category, race and gender to the extent businesses voluntarily provide this race and gender information, their location by city and ZIP code, and the specific contracts including dollar amounts awarded;

G. A listing of the number of small contractors and suppliers by race and gender, to the extent businesses voluntarily provide this race and gender information, in each of the following revenue categories that was certified in the program and, separately, that was awarded a contract:

1. For goods and services:

a. zero to five hundred thousand dollars;

b. five hundred thousand to one million dollars;

c. one million to two million dollars; and

- d. two million dollars to the maximum revenue amount allowed by the program rules;
- 2. For consulting:
 - a. zero to two hundred fifty thousand dollars;
 - b. two hundred fifty thousand to five hundred thousand dollars;
 - c. five hundred thousand to one million dollars; and
 - d. one million dollars to the maximum revenue amount allowed under the program rules;
- 3. For construction:
 - a. zero to five hundred thousand dollars;
 - b. five hundred thousand to three million dollars;
 - c. three million to eight million dollars; and
 - d. eight million dollars to the maximum revenue amount allowed under the program rules; ~~((and))~~

H. A listing of the number and firm name of certified small contractors and suppliers by race and gender, to the extent businesses voluntarily provide this race and gender information, awarded contracts through the small business accelerator program under K.C.C. 2.97.070.C. by contract category, their location by city and ZIP code and the specific contracts including dollar amounts awarded; and

I. Information about the priority hire program, including:

- 1. Contracts completed under the priority hire program by women-owned and minority-owned businesses, open shop contractors and small contractors and suppliers;
- 2. A description of barriers encountered by women-owned and minority-owned businesses, open shop contractors and small contractors and suppliers that participate or attempt to participate in the priority hire program;
- 3. The share of work on priority hire contracts that was awarded to women-owned and minority-owned businesses, open shop contractors and small contractors and suppliers;
- 4. Changes to the bid response rate as compared to the period prior to the institution of the priority

hire program;

5. Changes in prime contractor bid prices as compared to the period prior to the institution of the priority hire program; and

6. Administrative costs for the division related to the priority hire program.

SECTION 8. Ordinance 12787, Section 6, and K.C.C. 12.16.175 are hereby amended to read as follows:

The administrator shall submit an annual report to the executive detailing performance of the apprenticeship program under this chapter, and the priority hire program as required under section 6 of this ordinance, by April 15 of each year. ~~((This))~~ The report shall be forwarded to the council no later than April 30. The report shall include, but not be limited to the following:

A. The number and kinds of public works projects and contracts on which apprenticeship and priority hire requirements were established;

B. The percentage of labor hours actually worked by apprentices and priority hire workers on each such project and the total number of labor hours on each project;

C. The number of apprentices and priority hire workers by contractor broken down by trade and craft category, home ZIP codes for priority hire workers, the wages paid by category of work or trade, the number and percentage of minorities, women, persons with disabilities, veterans and disadvantaged youth utilized as apprentices and priority hire workers, and the degree of compliance with the percentage goals to be established ~~((pursuant to))~~ under K.C.C. ((12.16.150)) 12.16.155 through 12.16.180;

D. A description of problems encountered in the implementation of the requirements of K.C.C. ~~((12.16.150))~~ 12.16.155 through 12.16.180, which shall include, but not be limited to, access by open shop contractors to state-approved training program apprentices and the resolution of any problems arising therefrom;

E. A description of barriers encountered by participating apprentices and priority hire workers and steps taken to resolve those problems and to insure their continued participation in the program;

F. The number of new apprentices indentured during the reporting year as ~~((a result of the county's apprenticeship training requirements for its construction contracts))~~ reported by the Washington state Department of

Labor and Industries; and

G. The percentage of apprentices in training who have graduated to journey level during the reporting year.

SECTION 9. Severability. If any provision of this ordinance or its application to any person or circumstance is held invalid, the remainder of the ordinance or the application of the provision to other persons or circumstances is not affected.