ORDINANCE 2016-044
By B. Johnson and Glidden
Intro & 1st Reading: 1/29/2016
Ref to: COW
2nd Reading: 6/17/2016

Amending Title 2, Chapter 24 of the Minneapolis Code of Ordinances relating to Administration: Public Works.

The City Council of the City of Minneapolis do ordain as follows:

Section 1. That Section 24.200 of the above-entitled ordinance be amended to read as follows:

24.200. - Payment of labor and materials first. When any contract is ordered to be made or let under the provisions of the city charter for any public improvements, either on streets, public grounds, public buildings or other structures, or for repairs thereto, or for any other purpose, such contract shall contain a special provision for the payment of the laborers, employees and those furnishing materials for such work or improvement, out of the amount due said contractors from the city, before any part is paid to said contractors, their heirs, agents or assignees. The requirements of sections 24.200, 24.230, 24.245, and 24.265 of this Ordinance do not apply to a contract, or work under a contract, where the estimated total cost of completing the entire project is less than fifty thousand dollars ($50,000). Projects under fifty thousand dollars ($50,000) shall be subject to the requirements of sections 24.220, 24.250, and 24.260.

Section 2. That Section 24.220 of the above-entitled ordinance be amended to read as follows:

24.220. - Prevailing wage required. All invitations to bid or request for proposals and all contracts entered into where, pursuant to ordinance or statute, a formal written contract ~~or~~ and a payment bond and performance bond is required to which the city is a party, for constructions, alteration and/or repair, including painting, decorating, sodding and landscaping of public buildings, or similar public works of the city and which requires or involves the employment of mechanics and/or laborers shall contain a provision stating that "all federal labor standards and prevailing wage provisions applicable to federal contracts in accordance with the federal Davis-Bacon Act and related ~~acts~~ federal regulations except as noted in section 24.240 of this ordinance are applicable to this contract as if fully set forth herein and all contractors and subcontractors shall fully comply with such provisions regardless of any contractual relationship which may be alleged to exist between the contractor or subcontractor and his employees." All such contracts shall also contain a provision stating that "Compliance with the City of Minneapolis Prevailing Wage Ordinance, sections 24.200 through 24.265 of the Minneapolis Code of Ordinances, is required as a material term of this contract and all such provisions are expressly incorporated by reference herein." A signed wage compliance certificate to guaranty the payment of the prevailing wage will be submitted as part of the bid. Any laborer, mechanic or employee employed by the contractor or any subcontractor directly on the project covered by the contract is intended to be a third-party beneficiary of the contract for the purposes of this Article. All such contracts shall also contain a provision stating that "Any laborer, mechanic or employee employed by the contractor or subcontractor directly on the project covered by the contract is intended to be a third-party beneficiary of the City of Minneapolis Prevailing Wage Ordinance, sections 24.000 through 24.265 of the Minneapolis Code of Ordinances."

Section 3. That Section 24.230 of the above-entitled ordinance be amended to read as follows:

24.230. - Pre-award conference. Promptly after bid opening and prior to contract award the apparent successful bidder shall submit to the ~~appropriate contract monitoring officer a list of all anticipated~~

~~subcontractors and the various classes of laborers and mechanics to be employed on the contract work, together with a schedule of wage rates and fringe benefits to be paid to such employees~~ director of the department of civil rights or his or her designee a signed wage compliance certificate guarantying payment of prevailing wage by the contractor and each subcontractor and a pre-construction booklet which will contain the following items:

(1) the identity and contact information of each, anticipated subcontractor and each, anticipated supplier of materials;

(2) the identity and contact information for each benefits administrator for the contractor and each subcontractor;

(3) the prevailing wage job classification of all laborers and mechanics for the contractor and each subcontractor;

(4) the anticipated number of hours to be worked per classification of laborer and mechanic for the contractor and each subcontractor;

(5) the prevailing rate of wages and benefits payable to each classification of laborer and mechanic for the contractor and each subcontractor; and

(6) proof of status of all subcontractors and independent contractors as required by section 24.265.

Such wage rates shall be at least the prevailing rates as required by section 24.220. Failure to comply with this provision shall be grounds for rejecting the bid.

Section 4. That Section 24.240 of the above-entitled ordinance be amended to read as follows:

24.240. – ~~Submission~~ Payment schedule and submission of statements and payroll records. All laborers and mechanics employed under the terms of the contract or otherwise employed at the project will be paid unconditionally, at a minimum, every two weeks (bi-weekly). ~~Upon the request of the appropriate contract monitoring officer, each~~ Each contractor or subcontractor engaged in work under the contract shall furnish to the ~~appropriate contract monitoring officer within five (5) working days, a copy of payrolls showing wages paid, and a wage compliance statement with respect to wages paid each of its mechanics and laborers employed on the site of the contract work~~ director of civil rights on a bi-weekly basis, a certified copy of the payroll for each laborer and mechanic showing wages and benefits paid, name, prevailing wage job classification, hours worked each day, total hours worked in each classification, hourly rate of pay, gross amount earned, each deduction for taxes, total deductions, net pay per week, dollars contributed per hour to each benefit, the name and address of each benefit administrator, pension contributions, and vacations and holidays earned and paid during the bi-weekly period. In the event the contractor fails to supply such ~~statements~~ certified payroll reports or if such ~~statements~~ certified payroll reports disclose that the required prevailing wage is not being paid, the ~~contract monitoring office~~ department of civil rights shall promptly notify the city finance officer who shall forthwith withhold payments to the contractor for such periods of noncompliance. During the course of and upon completion of the contract work, the ~~contract monitoring officer~~ department of civil rights shall have the right to require an appropriate audit of contractor's books and records to determine compliance or noncompliance with the provisions of sections 24.220 through ~~24.260~~ 24.265. Each contractor and subcontractor shall retain the relevant bi-weekly payrolls for a period of not less than one year after the completion of the work.

Section 5. That Chapter 24 of the Minneapolis Code of Ordinances be amended by adding thereto a new

Section 24.245 to read as follows:

24.245. Monitoring of prevailing wage. The department of civil rights shall monitor compliance with this article. Compliance monitoring shall include participation in the section 24.230 pre-award conference and the review of the certified payroll reports. Compliance monitoring shall also include job site visits to test the accuracy of information submitted by the contractor.

Section 6. That Section 24.250 of the above-entitled ordinance be amended to read as follows:

24.250. - Failure to pay prevailing wage. ~~Every~~ All invitations to bid or requests for proposals and all contracts entered into within the scope of section 24.220 shall contain the further provision ~~that~~ stating "That in the event it is found by the city that any laborer, mechanic or employee employed by the contractor or any subcontractor or independent contractor directly on the site of the work covered by the contract has been, or is being paid, a rate of wages and fringe benefits or their cash equivalent less than rates required by this article and by the contract, ~~the contract monitoring officer or officers~~ and if the violation remains uncured within thirty (30) days after written notice, then the department of civil rights may direct the finance officer to withhold contract payment or amounts owed to the contractor on the current contract or on other contracts between the city and contractor to the extent of underpayment of required wages and require the contractor to pay a fee equal to five (5) percent of the entire contract price to the city as liquidated damages, and may place the contractor on a suspended or ~~disbarment~~ debarment list and, by written notice to the contractor, terminate his/her right to proceed with the work or such part of the work as to which there has been a failure to pay said required wages and to prosecute the work to completion by contract or otherwise, and the contractor and his/her sureties shall be liable to the city for damages sustained thereby." ~~The city reserves the right to withhold contract payments to the extent of the underpayment of required wages.~~ The department of civil rights shall develop forms and rules, including due process rights, to provide guidance in carrying out the purposes of this section. Any contractor objecting to being placed on a suspended or ~~disbarment~~ debarment list, ~~by the contract monitoring officer~~ paying liquidated damages of five percent (5%) of the contract price or having payments withheld shall have the right to appeal in writing, within thirty (30) days of the decision of the department of civil rights, to the governing body of the appropriate contracting agency for review of the ~~contract monitoring officer's actions~~ actions of the department of civil rights.

Section 7. That Section 24.260 of the above-entitled ordinance be amended to read as follows:

24.260. - Failure to comply bars future contracts. The ~~contract monitoring officer~~ department of civil rights shall prepare and maintain a list of all persons or firms who are in default under any of the provisions of this article in regard to obligations to their employees, including being placed on a suspended or debarment list, and no further contracts shall be awarded or entered into with such persons or firms for so long as they are in default or for a three (3) year period from the time of default, whichever period is longer. A current copy of such list shall be kept on file in the offices of the city finance officer and purchasing agent.

Section 8. That Chapter 24 of the Minneapolis Code of Ordinances be amended by adding thereto a new section 24.265 to read as follows:

24.265. – Subcontractors and independent contractors. Any contractor or subcontractor who plans to accomplish all or a portion of the work under a contract within the scope of section 24.220 using subcontractors or self-employed independent contractors may be required to provide the department of civil rights with bona fide proof of the status of such entities in the pre-award conference required by section 24.230. All such subcontractors and independent contractors must have executed a written contract/subcontract agreement for their work performance. The department of civil rights will accept the

following as a bona fide demonstration of subcontractor status:

(1) Current business filing with the Minnesota Secretary of State along with the address and telephone number for that entity;

(2) Proof of workers' compensation insurance coverage;

(3) Proof of unemployment insurance.

In addition to the above criteria, a self-employed independent contractor must be performing work on the project under an independent contractor exemption certificate as defined by Minnesota Statutes Section 181.723, Subd. 4 and Section 326B.701. If the status of subcontractors or self-employed independent contractors cannot be determined by submission of the above information or documentation, subcontractor or independent contractor status will be disallowed and the individual(s) performing the work will be included on the engaging company's payroll as employees and will be entitled to receipt of the prevailing wage from the engaging company for all work performed.

On roll call, the result was:
Ayes: Reich, Gordon, Frey, Yang, Warsame, Goodman, Glidden, Cano, Bender, Quincy, Palmisano, President Johnson (12)
Noes: (0)
Absent: A. Johnson (1)
The ordinance was adopted.