Office of Workforce Development

Alternate Proposed Regulations Governing Implementation of the HireNOLA Ordinance With Respect to First Source, Participation Goals, and Continued Compliance

1.0 AUTHORITY
Pursuant to Chapter 70, Article IV, Division 3 of the Code of the City of New Orleans, The Office of Workforce Development (OWD) shall promulgate rules and regulations to implement the provisions of said division, which established HireNOLA, which links quality employment opportunities to local workers. The Office of Workforce Development shall have primary responsibility for general oversight, administration, compliance, monitoring and enforcement of this Policy.

2.0 APPLICABILITY
These regulations apply to “covered projects” as defined by Section 70-498 of the Code of the City of New Orleans.

3.0 PURPOSE
The purpose of this Policy is to address poverty and unemployment in New Orleans by linking employment opportunities created by City construction contracts and economic development projects to increased employment rates for the Local Workers and Disadvantaged Local Workers.

4.0 FIRST SOURCE
4.1 First Source. Prime contractors and their subcontractors shall utilize the City of New Orleans as its first source for recruitment, referral, and placement of all new hires for employment opportunities on covered contracts, as set forth in Sec. 70-500.

4.2 Contractor Process. Prime contractors and their subcontractors must notify the City of New Orleans of its specific need for employees, through the use of the Craft Employee Request Form, at least five (5) business days before advertising the employment opportunity to the general public. If a Local Worker quits, is transferred, is terminated, or otherwise ceases their involvement with the covered project, the contractor shall make best efforts to hire another Local Worker to fulfill the required local work hour goals.

4.3 Referrals. The City of New Orleans, with support from the Network for Economic Opportunity partners, shall screen applicants and provide prime contractors and their subcontractors with a list of qualified candidates based on who registered first with the Network according to the specific needs set forth by the prime contractor or its subcontractors. The City will request that the Network for Economic Opportunity outreach and solicit Local Workers and collect personal data, including but not limited to, their: name, address, phone number, email, skill-set or specialization, prior work history or experience, references indicating positive work performance, and certifications. Prime contractors and their subcontractors shall decide who they would like to interview and OWD will set up interviews where Contractors shall fairly consider qualified candidates. Contractors shall notify the City of New Orleans in writing the names of those First Source candidates solicited who are deemed unqualified and the reason why they failed to qualify. “Qualified,” as provided herein, shall mean individuals who possess a needed skill-set, specialization, or qualification that meets the requirements to fill a particular vacancy.

4.4 Hiring Discretion. This Policy does not limit a Prime Contractor or a Subcontractors’ ability to assess qualifications of prospective candidates, and to make final hiring and retention decisions. No provision of this division shall be interpreted as a requirement for Prime Contractors or
Subcontractors to employ any candidate not qualified for the position in question, or to employ any particular candidate.

(a) Core Employee Exemption. Prime contractors and their subcontractors shall be granted a First Source exemption where an employment opportunity is filled by a Core Employee. To exercise this exemption, the prime contractor or subcontractor is required to submit a list of core employees ten (10) business days before the commencement of work on the Covered Project supported by certified payroll records for the prior to date of award of the contract for a Covered Project.

(b) Internal Promotions. Employment opportunities to be filled by an internal promotion of core employees do not need to be referred to the City of New Orleans for placement and referral. A Prime Contractor and their subcontractors shall notify the City of New Orleans of such promotions in the workforce roster.

5.0 LOCAL PARTICIPATION GOALS

5.1 Local Participation. Prime contractors and their subcontractors shall ensure that a sufficient number of work hours are completed by Local Workers to meet the local participation goals, as set forth in Section 70-499.

5.2 Good faith efforts. Prime contractors and their subcontractors shall make good faith efforts to achieve local participation goals. A Prime Contractor or its Subcontractor can show that it has made good faith efforts to comply after execution of the contract by demonstrating that it performed, at minimum, the following actions:

(a) Adherence to the procedures and plans set forth in the contractor’s updated Manpower Utilization Plan informing OWD of potential vacancies on a covered project, as approved by the City;

(b) Contacting and fairly considering qualified individuals from the First Source database as provided by OWD to fill potential vacancies, where fair consideration includes refraining from asking about a worker’s criminal record on the application and only checking records at the interview stage and where it is related to the job at issue;

(c) Convening pre-construction meetings to educate its managers and subcontractors on the requirements of this policy;

(d) Utilizing registered apprenticeship programs at a ratio of 1 apprentice to 3 journeymen;

(e) Soliciting local workers by advertising vacancies at the local work site and by circulating the advertisement with appropriate community organizations and apprenticeship and pre-apprenticeship programs. Advertisements must include, in clear and accessible language, at a minimum, the position description, desired candidate qualifications, wage rate, application deadline, and contact information in all advertising materials;

(f) Documenting efforts to solicit and hire local workers, including documentation of interested local workforce candidates who are deemed unqualified and the reason why they failed to qualify; and


6.0 MONITORING

6.1 Authority. OWD has the authority to monitor and investigate compliance on “covered project” contracts to ensure continued compliance with the goals and Good Faith Efforts provided herein.
6.2 Designation of authority. OWD has the authority to designate third parties, including both workers and community stakeholders, to support monitoring and compliance efforts. OWD will determine minimum qualifications for designated parties and supervise designated parties.

6.3 Monitoring on site. OWD, and its designees, may monitor compliance on a “covered project” by a variety of means, which may include but are not limited to:
   (a) Unannounced inspection of job site, including access to employees for interview and records required pursuant to these rules,
   (b) Review of data submitted via the Contract Compliance Monitoring System, including payroll tracking,
   (c) Reviewing of records, reports, and additional documents as requested by OWD or its designees,
   (d) Interviews of employees, and/or
   (e) Receipt of complaints by workers themselves.

6.4 Convening to monitor projects. The Office of Workforce development shall convene (1) quarterly meetings of stakeholders for each project with a contract greater than $25 million; and (2) quarterly meetings with all stakeholders for all other projects.

6.5 Receipt of complaints by workers. The Office of Workforce Development will create a website and receive complaints related to the enforcement of the ordinance and the contractor or subcontractors’ good faith compliance with the terms of the ordinance. OWD shall have the power to investigate complaints and can designate this power to third parties and the Community Workforce Committee.

6.6 Monitoring and compliance community Committee. The Office of Workforce Development will create and duly authorize an independent advisory Committee called “the Community Workforce Committee”.
   (a) This Committee will be composed of seven (7) members who shall select a chair from the membership of the Committee;
   (b) Members will be appointed initially, at the establishment of the Committee, staggered for one, two, and three year terms, as determined by the Office of Workforce Development; and then for standard three-year terms;
      i) Members shall serve for no longer than two full terms. However, a member with an expired term shall serve until their successor is appointed;
      ii) Vacancies shall be filled in the same manner and from the same membership classifications as the initial appointment.
   (c) Members will be appointed by the Mayor with the approval of City Council as follows:
      i) One from a list of two names submitted by the Opportunity Centers from the Network for Economic Opportunity;
      ii) One from a list of two names submitted by the Louisiana Association of General Contractors;
      iii) One from a list of two names submitted by the Bayou Chapter of the Associated Builders and Contractors
      iv) One from a list of two names submitted by the Southeast Louisiana Building and Construction Trades Council
      v) One from a list of two names submitted by the Apprenticeship Directors of the Southeast Louisiana Building and Construction Trades Council
      vi) One from a list of two names submitted by the Collaborative;
      vii) One from a list of two names submitted by Stand with Dignity.
   (d) The Committee will assist the Office of Workforce Development with monitoring and compliance, investigating worker complaints, and the Periodic Review of the ordinance by, at
minimum, hosting a public hearing to solicit the experiences and opinions of community members.

6.7 Public access to monitoring data. OWD will make data collected available to the public through a bi-annual report to the City Council on contractor compliance with the goals of the local ordinance. OWD will also set up a website and publish non-compliance data monthly.

7.0 RECORDKEEPING AND REPORTING

7.1 Documentation Requirements. The City shall only award or enter into a contract for a Covered Project if the prime contractor has submitted documentation establishing that the prime contractor (1) has a written plan describing how it intends to meet the Local Participation requirements; and (2) commits to implement the First Source provisions of this Policy. Prime contractors and their subcontractors shall submit the following required documents to the City of New Orleans:

(a) A Manpower Utilization Plan, that at a minimum contain a description of needed craft workers throughout the duration of the project, at what points during the project they will be utilized, the wages that will be paid to each category of worker, and how the contractor will meet the participation requirements of this Policy must be submitted as part of the response to the Request for Proposal.

(b) An updated Manpower Utilization Plan and Workforce Roster within three (3) business days following award notification that lists at a minimum, the names and residency status of all current employees who will be employed on the project and all new employment opportunities, including wage levels, that will be created as a result of the applicable contract must be submitted and approved by the City prior to the commencement of work on the covered project.

(c) Craft Employee Request Form for all requests for dispatch of craft workers (including apprentices and journeymen), who are qualified Local Workers or Disadvantaged Local Workers from a union hiring hall or The City of New Orleans. This form should be submitted to the City of New Orleans at least three (3) business days before advertising the employment opportunity to the general public.

7.2 Recordkeeping. Prime Contractors and subcontractors shall:

(a) Maintain records through LPC Tracker of payroll, time cards, tax forms, and superintendent and foreman daily logs for all workers for a period of three years, and shall include the name and address of each worker who worked on the covered project, their classification, a description of the work performed each day, the daily and weekly number of hours worked, the self-identified race, gender, and ethnicity of each worker, whether or not the worker was a local resident or disadvantaged worker, whether worker is a non-Louisiana worker, and the referral source through which employer hired the worker;

(b) Maintain documentation of good faith efforts to abide by local participation goals;

(c) Submit additional records as requested by OWD and designated individuals;

(d) Submit records to OWD monthly, and

(e) Allow OWD and their designees access to records.

8.0 PERIODIC REVIEW

8.1 Periodic review by the Office of Workforce Development (OWD) and City Council. OWD, in coordination with City Council, shall every year from the effective date of this Policy, evaluate the impact of existing mandatory participation levels. The OWD/City Council review shall:

(a) Consider whether there is a sufficient supply of qualified unemployed resident workers to meet the increased Local Worker participation rates set forth in the ordinance;
(b) Recommend steps the City can take to support apprenticeship utilization on city-funded construction projects to help build a qualified local workforce;
(c) Make relevant findings in support of those determinations;
(d) During the periodic review process, OWD and City Council shall consult with a broad spectrum of relevant stakeholders including the community and the Community Workforce Committee; and
(e) Upon completion of a periodic review, OWD shall furnish City Council with a report.

8.2 Include community input. Periodic review shall consider worker complaints and recommendations by the Community Workforce Committee during Periodic Review.

9.0 NONCOMPLIANCE AND ENFORCEMENT

9.1 Contractor Cooperation and Compliance. Prime contractors shall agree that they and their subcontractors will fully and completely carry out the requirements of this Policy. The prime contractor shall ensure that their subcontractors of all tiers comply with this Policy and will assume responsibility for submission of the required documents for both the prime contractor and their subcontractors.

9.2 Cooperation and Compliance. All City departments, agencies, boards, commissions, and corporations shall:
   (a) Work collaboratively with the City of New Orleans to implement the requirements of this Policy, including notifying the City of New Orleans of applicable contracts at the time of award notification;
   (b) Include the provisions of this Policy in every bid solicitation and incentive application for applicable contracts;
   (c) Assist prime contractors and their subcontractors in complying with this Policy; and
   (d) Assist the City of New Orleans in its monitoring and enforcement activities to further the purposes of this Policy.

9.3 Noncompliance. Prime contractors shall be deemed noncompliant in instances where they or their subcontractors fail to abide by the terms of the ordinance.

9.4 Waiver of local participation goals. Upon receipt of a written request by a head of a City department, agency, board, or commission, the City Council, may reduce the local participation goals or waive the local participation requirements in a particular contract if it is deemed by the City Council, after public hearing and a recommendation from the Community Workforce Committee, in its discretion, to be in the best interest of the City to do so. Any such reduction or waiver shall be made in writing. The City Council shall have discretion to waive specific local participation goals either in the RFP/bid stage or after the actual award of the contract where a contractor can establish that despite making good faith efforts, it is unable to meet the local participation goals established for such contract.

9.5 Consequences for Noncompliance with First Source hiring requirements. In addition to any other corrective action allowed by law, contract, or City policy, any prime contractor who fails to comply with First Source hiring requirements may be subject to corrective action:
   (a) Failure to submit required documentation. Failure to submit a “Manpower Utilization Schedule” within three working days of bid opening that contains an approximation of needed craft and unskilled workers and the hours that they will be needed throughout the duration of the project or failure to submit other documentation outlining a plan for utilizing local workers through the First Source hire program as part of the Invitation to Bid, Request for Proposals, or Request for Qualifications, may render the bid, proposal, or statement of qualifications non-responsive to that solicitation causing the Prime Contractor to lose the bid.
(b) Failure to hire a worker through the City’s First Source system. Where a Contractor fails to inform the city of its need for workers and solicits workers externally prior to using the First Source system, in violation of Section 70-500, the City shall send a notice of non-compliance and withhold payments until the Contractor comes into compliance and utilizes the First Source system.

(c) Repeated failure to use the First Source system. Where a Contractor repeatedly fails to use the First Source system, the Contractor is in material breach of its contractual and legal obligations and the City shall rescind its contract with the Contractor. “Repeatedly” is defined as continued non-compliance with First Source requirements as stated in Section 70-500 for a period of 2-weeks after receipt of City’s notice of non-compliance.

9.6 Consequences for Noncompliance with Local Participation goals. In addition to any other corrective action allowed by law, contract, or City policy, any prime contractor who fails to comply with Local Participation goals may be subject to corrective action:

(a) Where a Prime Contractor fails to submit a Manpower Utilization Plan: The City shall not let the contract to the bidding Contractor as an “irresponsive bidder”.

(b) Where a Prime Contractor is not complying with its own Manpower Utilization Plan: The City shall provide Prime Contractor notice of non-compliance when it fails to comply, or fails to make a good faith effort to comply, with its own Manpower Utilization Plan and provide ways to remedy non-compliance based on the local participation goals set forth in Contractor’s own Plan. Where a Contractor continues to fail to increase local participation in line with its own plan, or fails to show good faith efforts, the City shall withhold payments from Prime Contractor.

(c) Where a Prime Contractor fails to comply with local participation goals at the end of contract period. If a Prime Contractor fails to comply with local participation goals, or fails to make a good faith effort to comply, the City shall choose from a range of consequences based on the severity of non-compliance, including but not limited to, listing the Prime Contractor on a public list of non-compliant contractors and listing Contractor as an “irresponsible and nonresponsive” bidder for the purposes of future City awards of bids or tax credits with a 1 year bar on future contracting with the City;

(d) Where a Prime Contractor repeatedly fails to comply with local participation goals on multiple contracts. If a Prime Contractor fails to comply with local participation goals, or fails to make a good faith effort to comply, on multiple contracts, the City may choose to permanently bar bidding with the Contractor as an “irresponsible and nonresponsive” bidder.

9.7 Mandatory contractual language. Potential consequences for non-compliance will be included as mandatory contractual language in all City contracts for covered projects.

The Office of Workforce Development shall ensure full compliance with the terms of the NOLAHire ordinance and rules.