

Implementing Apprenticeship Utilization Requirements

Webinar Question and Answer Summary

And

Key Takeaways

This document answers many questions asked during MRSC’s “Apprenticeship Utilization Requirements” two-part webinar series held on April 24, 2024, and May 30, 2024, as well as additional questions received outside of the webinars.

Background

Historically, most local governments in Washington have not been required to include apprenticeship utilization requirements in their public works contracts. The apprenticeship utilization requirements of RCW 39.04.320 only applied to school districts, four-year institutions of higher education, and certain state agencies, though some local governments chose to include specific apprenticeship utilization requirements by policy. However, beginning on July 1, 2024, all municipalities – defined in RCW 39.04.010 as cities, counties, port districts, and any other public agency authorized by law to require the execution of public work (excluding various diking/drainage/irrigation districts) – will be subject to new requirements.

General

Apprenticeship utilization requirements can be found in [RCW 39.04.320](#). The Washington State Apprenticeship Act can be found in [RCW 49.04](#) and rulemaking can be found in the Washington Administrative Code [WAC 296-05](#).

The Washington State Apprenticeship & Training Council (WSATC) is the “authority having jurisdiction” and is responsible for approving training programs and tracking apprentices and their utilization throughout the state. WSATC hosts the [Apprenticeship Registration & Tracking System \(ARTS\)](#) which can be used by contractors to prepare for apprenticeship utilization on public projects.

- **What is my responsibility as an awarding agency “municipality?”**

Your responsibilities are:

- a) **Include** apprenticeship utilization requirements, associated processes, and wages are in your **contract documents** for applicable projects.
- b) Ensure bidders/prime contractors have a **plan** to meet the requirements that includes all subcontracting therefore apprenticeship opportunities for the project.
- c) Ensure contractors and subcontractors **file/report** intents, certified payrolls, and affidavits in L&I’s [Prevailing Wage Intents and Affidavits \(PWIA\) portal](#) prior to making payments.
- d) Review and **approve any adjustments** to apprenticeship utilization percentages through an established **good faith efforts process**.
- e) Apply any **incentives** or **penalties** if applicable.

- **Do we need a resolution or an ordinance?**

No, not unless a resolution or an ordinance is how your agency adopts rules and procedures. You should be consistent with how your agency adopts internal controls. RCW 39.04.320(5)(b) states that MRSC and L&I shall provide training “...on how a municipality (awarding agency) must adopt guidelines, including procedures, rules...”

- **Is the \$2M threshold for including Apprentice Utilization Requirements (AURs) the engineers estimate or the bids?**

Your engineer’s estimate, as RCW 39.04.320 notes with **emphasis** added: “As of July 1, 2024, for all public works contracts awarded by a municipality **estimated** to cost \$2,000,000 or more, all specifications must require that no less than 15 percent of the labor hours be performed by apprentices.”

If using an estimated cost range in bid documents, MRSC suggests being conservative and including the AURs for ranges that include \$2M as the upper range.

- **Should the engineer’s estimate, and therefore threshold determination, include tax?**

Yes.

- **So, does that mean if our engineer’s estimate is \$1.75M apprentice utilization is not required?**

Yes, not until 2026 when the threshold is lowered to \$1.5M.

- **How long does it take a prime contractor to coordinate at this level with subcontractors, it seems like a lot?**

6 months is an average. According to the current guidance from the Washington State Apprentice & Training Council (WSATC), it takes approximately 6 months for an employer (contractor/subcontractor) to register as a training agent and establish a training program. It is advisable to give contractors *at least 6 months* of notification that a project with apprentice utilization requirements will be advertised.

Federal Funding

It is common for multi-million-dollar public works projects to have multiple funding sources, including funding from federal grants. When a project has multiple funding sources it is a best practice to analyze all the procurement and contracting requirements from each funding source and use the most restrictive in any one provision or topic (e.g., federal wages vs. local prevailing wage).

- **My project has “federal funding,” is apprentice utilization required?**

Unlikely. There cannot be a definitive answer without analyzing the specific grant, but there are few federal grants that allow *state-specific* apprentice and labor workforce requirements. (See WSDOT [guidance](#) on **federal highway funding** requirements).

- **I know for certain my federal grant does not allow apprentice utilization, what do I do?**

There are two common practices currently used a) remain silent, or b) include a general statement where the apprentice utilization provision would normally be. For transparency, it may be a good idea to state in the advertisement/invitation that the project is federally funded and include a separate exhibit detailing the procurement, contracting, reporting and similar requirements required under the federal grant. Include in the exhibit a statement that there is no state apprentice utilization requirement.

Bidding Documents

When the engineer’s estimate is \$2M or more and apprentice utilization requirements (AURs) are to be included in the project, several documents are impacted within your bidding document package. Depending on your agency and if you use CSI (lump sum) or APWA/WSDOT (unit price) contract formats there could be different approaches to including AURs.

- **What provisions/documents typically include language about apprentice utilization?**

- Advertisement/Invitation
- Bid Form
- Instruction to Bidders/Bidder’s Checklist
- Bidder Responsibility (RCW 39.04.350)
- General Conditions
 - Apprentice Utilization Requirements (general special provisions)
 - “Incentives and penalties”
 - Bid Item/Line Items Descriptions
 - Payment Processes
 - Prevailing Wage (RCW 39.12)
 - Subcontracting and Flow-Down Provisions
 - Acceptable *Good Faith Efforts* and conditions under which an adjustment will be able to be made for the project
- Forms
 - Apprentice Utilization Plan
 - Good Faith Efforts/Apprentice Utilization Adjustments
 - Payment Application/Invoice Cover Sheet

Note: This list is “typical” and current practice, not all are required by statute. Each agency should be consistent with their approach to adding additional contracting requirements and processes. Any example document should be customized, never “copied and pasted.”

Expected Cost (line item)

RCW 39.04.320(4)(b) says that there must be a “specific line item” in the contract regarding an *expected cost value* to be included in the bid associated with meeting AURs.

- **What is the current practice for itemizing an “expected cost”?**

Included with other costs in the bid. The current practice by state agencies and institutions of higher education is to include a statement in the bidding documents that *directs bidders to include any costs associated with meeting the requirements of apprentice utilization with other (labor) costs in their bid.*

- **Does an agency set this cost or does a bidder bid this cost?**

The bidder. Under current practices, the bidder determines the cost and includes this cost with other (labor) costs on the project.

- **Are there other practices to consider?**

Yes. Because of the administrative and additional program costs of state registered apprentices and state-approved training programs, it could be valuable to *itemize those costs*, so all bidders, regardless of tier, can recoup the specific costs needed to include apprentices with their bids.

Apprentice Utilization Plans

Apprentice Utilization Plans (AUPs) are a good tool to help bidders detail **all** their subcontractors and trades (scope) for the project. It should include dates when subcontractors are initially intended to start work and estimate how many workers and hours are planned. AUPs work best when provided on a form prepared by awarding agencies. A prime should include ALL the subcontractors, trades, and scopes on the AUP.

- **Do agencies have to check the AUPs? Or does L&I review?**

Agencies. Agencies should review the AUP to confirm all the subcontractor scopes are listed, what programs and trades are going to be utilized or targets.

- **How accurate does an AUP need to be?**

Accurate. 90+% accurate if you need a number. A prime contractor should know, when bidding, the scopes, and subcontractors (types) they will need for the job. They may not have a signed subcontract with a business, but they do know the scopes and trades to be used on the project. Often scopes that come late in a project (e.g., landscaping) may not be subcontracted until closer to when the scope will be performed. At the start of the project a prime will know that landscaping is needed on the project and that there are apprentice programs for landscape labor, etc. An AUP should reflect all trades needed on a project.

- **What if the AUP doesn't show 15% apprentice utilization?**

It depends. It is common not to have a confirmed 15% apprentice utilization at the time of bid or award. You will want to track what efforts can, will, and should be made to hire registered apprentices as scopes are subcontracted and change order work is authorized. It is good practice to request updates of the AUP as subcontractors are contracted and change orders are approved.

- **Can we ask for a narrative with the AUP?**

Yes. RCW 39.04.310(2) says that an AUP is a plan specifically *detailing verifiable efforts* to meet AUR. Asking a prime to describe what scopes are to be subcontracted, what scopes are left to subcontract and some of the contacts they have made in preparing the bid or when negotiating agreements could all be ways of “detailing verifiable efforts.” Agencies are encouraged to request the information in a manner that is “verifiable” to those that are reviewing the plan. However, it is not recommended that the narrative is the only pieces submitted as a plan. One of the benefits of an AUP is to be able to use it when looking at data L&I’s portal, so something with the same information as submitted to L&I would help.

- **What happens if we find an AUP to be inaccurate or in some way not acceptable?**

Reject the plan and require a resubmission/update. Like other types of forms or documentation requirements, an AUP should have instructions or something similar giving guidance to a bidder as to what should be filled out where, and how the plan will be reviewed. Reserve your rights to “reject” or “not accept” under certain conditions, alongside any remedy opportunities that will be afforded. It is recommended that written communication accompanies any rejected form, detailing what part of the plan you felt was not accurate or unacceptable and what the bidder needs to correct and resubmit. Further, it is recommended that AUPs are updated throughout the project to track subcontracting opportunities and hired registered apprentices.

- **What happens if the AUP is submitted but, through the contractor/subcontract verification look-up the contractors and subcontractors listed are not “training agents?”**

Reject the plan and require a resubmission/update. If the contractors are trying to get all the paperwork together and get through a process with WSATC a window to get through the administration may be warranted. An update can/should be provided once complete. If apprentice utilization hours cannot be counted due to the lack of adherence to a program requirement, *then a contractor would not meet the goal and a penalty would be assessed.* Unless the coordination and efforts to comply are in good faith accepted by an agency as the appropriate level of the contractors/subcontractor effort. Document the attempts and coordination with WSATC, etc.

Incentives

RCW 39.04.320(4)(b) states that there must be a specific “line item” in the public works contract for a monetary incentive for meeting the [AUR] goals.

- **What are the current levels of incentives being given?**

Currently incentives are nominal and specified between \$1,000 - 5,000 for meeting 15% apprentice utilization percentage *without using good faith efforts*.

- **Are there other incentive practices that could be considered?**

One opinion is that a good motivator might be to transparently **compensate** for the cost to hire and train apprentices through state-approved programs, while avoiding unintentionally or unfairly un-leveling the bidding field for contractors that may have to “pay more to play.”

Translation: Provide a pre-determined “incentive” allowance that compensates for documented direct costs to the project for training registered apprentices. A pre-determined amount for the allowance would mean that each bidder is given the same amount and can proportionally flow it down to subcontractors as needed. This approach also promotes equity in contracting and helps small open-shop contractors compete more effectively in this space.

The current listed cost for apprentice instruction courses is about \$3,500 per apprentice. The average \$2M civil project has approximately 5 scopes with apprentices so that would mean no less than \$17,500 for instruction costs. (Note: the numbers used are illustrative and vary widely depending on the trade, levels of apprentice, and by program.)

- **Wouldn’t an “incentive” be considered a gift of public funds?**

No. If there is a requirement specified, documented “work” and a benefit to the public established as part of the contract documents this type of compensation is not considered a “gift.” See more information at MRSC.org.

- **How does an agency “pay” for an incentive?**

A line item in the Schedule of Values or an item on the bid form used on the final payment application.

Penalties

RCW 39.04.320(4)(b) states that there must be a specific “line item” in the public works contract for a monetary penalty for not meeting the [AUR] goals. *Monetary penalties are NOT assessed if a contractor makes a good faith effort that is accepted by the agency.* If monetary penalties are assessed, L&I will record the amount in their “internal” report.

- **What are current practices for “penalties?” What type of money are we talking?**

L&I recommends a “stepped” or “tiered” approach to penalty assessments where the amount is a calculation based on how many hours of utilization under the required 15% the project labor hours were. See *Implementing AURs Webinar PowerPoint*.

- **How do penalties get assessed? Where does the money go?**

Current practice is to **deduct the penalty from monies otherwise due to the contractor** on the final payment, like a liquidated damage deduction. If there are no monies left a separate invoice can be sent to the contractor. Retainage is held until this invoice is paid.

Where the money “goes” it up to each individual agency. Agencies will need to decide what is best and what is consistent with project accounting practices. MRSC has observed that monies are often returned to the project funds as a project “underrun.”

Good Faith Efforts (Adjusting Apprentice Utilization Percentages)

The ability to *adjust* apprentice utilization requirements is given to agencies. RCW 39.04.320(2) says that adjustments can be made for a **specific project** under several different scenarios and allows for “other criteria the awarding agency deems appropriate.”

- **I hear there is a national worker shortage, I have seen reports and studies that seem to indicate that is accurate. Based on this information can’t an agency just “waive” any apprentice utilization requirements until there are more programs and registered apprentices that serve my city/county?**

“Blanket waivers” are not consistent with the statute. RCW 39.04.320(2) requires that an adjustment can be made on a *project basis*. For a specific project, you need a prime contractor’s listing of all the scopes and trades to be used/needed before inquiries can be made as to the availability or programs that “serve” your area. Depending on what the outcome of the lowest responsive bid from a responsible bidder is their subcontracting and apprentice opportunities could vary.

- **What are “typical” good faith efforts?**

Emails and letters (corroboration) from multiple state approved programs stating that there are **no apprentices available within the time frame of a project**; no state-approved program for the scope(s) of the project, not enough time on the project to make the necessary ratio(s) or classroom time, or some other logistics reason registered apprentices are not able to work.

- **What are some examples of “other criteria” that agencies have “deemed appropriate?”**

There are examples and descriptions in the webinar handout. Some to further highlight:

- **Worker displacement.** If it happens that to hire an apprentice, a contractor/subcontractor would have to lay off members of their retained workforce, an adjustment to the required percentage is lowered proportional to that sub. Documentation is provided around length of employment of workers, program requirements, etc.
- **Unbalanced Program costs.** If the cost to train through state-approved program is ½ or more the cost of a subcontractor’s entire bid, it is “unbalanced,” and an adjustment to the required percentage is lowered proportional to that sub. Documentation includes program information and costs along with the subcontractor’s bid.
- **Change order work.** In the event that an approved (new work) change order either does not include scope or the time to accommodate apprentice ratios, it may cause the total project hours to be different than planned, and the percentage of apprentice utilization is adjusted. Documentation is typically the change order itself and an updated AUP with notes discussing the unplanned hours causing the percentage of apprentice hours to drop.
- **Federal funding.** If an agency uses the contractor to verify there are no state apprentice utilization requirements in a project grant and has the contractor submit a good faith effort/adjustment request, the agency may specify this process. However, typically a contractor does not know anything about the funding requirements beyond what an agency puts in the contract, so this is not a recommended practice.

Tracking and Reporting

The “official record” and percentage of apprentices utilized on a project are recorded through L&I’s Prevailing Wage Intent and Affidavit System (PWIA) agency portal. After the Award, the awarding agency should set up the project in the L&I system indicating that apprentice utilization is required and confirming the details of your project award. L&I is responsible for any reporting to WSATC or “the state” on apprentice utilization on public works projects. Agencies should use the PWIA agency portal to ensure required documentation is complete and accounted for prior to making any payment on a public works project.

- **What happens if the percentage of apprentice utilization is not 15% after certified payrolls are entered?**

A notification should be sent to all contractors and subs to get the required paperwork in. Affidavits are used to determine the final percentage of apprentices utilized, not certified payrolls. If percentage do not match in PWIA, it typically means that not all the intents, certified payrolls and affidavits are submitted. PWIA has a function too that may be used to notify and prompt when paperwork is missing.

- **Who submits the approved good faith efforts to the portal?**

The best practice is the awarding agency. A contractor may also add files to the system. Once the contractor has provided the agency the acceptable documentation to corroborate the good faith efforts that justify a reduction in apprentice utilization percentages, an awarding agency is encouraged to “sign” a document and load it into the PWIA using “add files” functionality.

- **How does an agency report when a penalty has been assessed?**

Best practice would be to **place a copy** of the final payment with the line item highlighted as a deduction from monies owed, or a copy of the payment received from a separate invoice, **into the PWIA portal (“add files”)**.

If apprentice utilization is under 15% when all affidavits are accounted for, and there is no agency approved good faith efforts in PWIA, the agency will receive a call from L&I’s apprentice section and arrangements may be made for L&I to collect the necessary information and update PWIA.

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