

The Office of Community Hiring

Notice of Adoption of Rules

Pursuant to the authority vested in accordance with Section 3502 of the New York City Charter, the Director of the Office of Community Hiring and Workforce Development (OCH) hereby adopts the new title 74 of the Rules of the City of New York for the implementation of community hiring that would leverage the City's purchasing power to require contractors and subcontractors to make best efforts to employ low-income individuals and residents of economically disadvantaged communities.

The proposed rules were published in the City Record on October 4, 2024. A public hearing was held on November 13, 2024. Three people testified at the hearing and OCH received ten written comments (two of which are from commenters who also spoke at the public hearing). Upon careful consideration of the comments, OCH adopts the following rules.

Statement of Basis and Purpose of Rules

The Office of Community Hiring and Workforce Development (OCH) is adopting the following rules pursuant to sections 1043 and 3502 of the New York City Charter (Charter) to administer Community Hiring on City procurement contracts.

Background

On November 17, 2023, the Governor signed Chapter 669 of the Laws of 2023. This Law, which became effective on May 15, 2024, amended the Charter to provide for the implementation of a community hiring program that leverages the City's procurements by requiring contractors and subcontractors to make best efforts to hire low-income individuals and residents of economically disadvantaged communities.

As authorized by Section 3502 of the Charter, OCH, an office established within the New York City Department of Small Business Services (DSBS), is promulgating a new title in the Rules of the City of New York to implement the City's Community Hiring program. The rules set forth, among other things, the requirements and procedures for application of Community Hiring Goals to City procurement contracts.

The City procures billions of dollars of services for New Yorkers, ranging from designing parks, to providing social services programs, to repairing roads and bridges. These procurements have the potential to expand economic opportunities, including employment. The City's Community Hiring seeks to narrow economic disparities and contribute to the creation of a more equitable workforce by directing employment opportunities created by City procurements to economically disadvantaged individuals.

In light of the implementation of Community Hiring, the City will phase out its former workforce development initiative, HireNYC. Community Hiring will further the City's core workforce development objectives while building upon the insights and experiences gained from HireNYC to ensure an efficient, streamlined process that reduces the burdens on City vendors.

Community Hires

Labor market shifts and economic shocks, such as the COVID-19 pandemic, have exacerbated economic disparities—leading to negative impacts on vulnerable populations and increasing the concentration of poverty in economically disadvantaged regions. With the historic increase in inflation, many New Yorkers have struggled with the cost of living in the City, which is higher than the state and national averages. Access to a broad range of employment opportunities, from entry-level jobs to positions requiring experience, is an indispensable factor in remediating economic disparities and increasing income security.

These rules define “Income-Based Community Hire” and “Residence-Based Community Hire,” for purposes of determining whose employment would be credited towards a numerical goal set for contracts under this program. In accordance with Section 3501 of the Charter, the rules establish 300 percent of the Federal Poverty Guidelines as the applicable income threshold for an Income-Based Community Hire. Accordingly, an Income-Based Community Hire is defined as an individual who is certified as having an individual or household income that falls below 300 percent of the Federal Poverty Guidelines.

The Federal Poverty Guidelines are updated periodically in the Federal Register by the U.S. Department of Health and Human Services under the authority of 442 U.S.C. 9902(2). The selection of 300 percent as the threshold (which for a single household is about \$45,000) was based on the 2022 federal census data on poverty and income, which demonstrated that about two million working age New Yorkers live below that threshold. The 300 percent threshold was also informed by extensive stakeholder input prior to submission of the proposed rules.

One public comment recommended that the income threshold be set at 150, rather than 300 percent of the Federal Poverty Guidelines, in order to focus on providing job opportunities to individuals most impacted by economic disparities. OCH understands the importance of connecting such individuals to workforce development support and anticipates that this can be achieved through Referral Sources that prioritize the needs of certain populations. While the 300 percent threshold opens Community Hiring to a wider population of jobseekers, this threshold will not prevent those living below 150 percent from access to a broad range of job opportunities across different sectors, varying by skills levels, interests, and professional licensing or certification requirements.

Certification

These rules also set forth the procedure for certification of both Income-Based Community Hires and Residence-Based Community Hires.

OCH received some public comments related to the certification and tracking of Community Hires. OCH recognizes the importance of leveraging existing data sources and systems to streamline this process. In order to minimize burdens and avoid duplicative processes, the rules have been revised to allow for certification of Community Hires by Referral Sources in two ways. Individuals can be certified either by completing a self-certification form or based on information collected through the existing intake process of a Referral Source, provided such process is approved by the Director of OCH. This change is intended to minimize the

administrative burdens on Referral Sources, as well as contractors, subcontractors, and individuals. This change will allow union referral systems to continue to rely on their established processes for purposes of certifying Community Hires.

For certification of new Residence-Based Community Hires, the employees' full addresses in certified payroll reports can be used to verify residence in an "Economically Disadvantaged Region" or certain public housing. As certified payroll reports are existing legal requirements that contain the required information, reliance on these reports would minimize the administrative burdens on contractors, subcontractors, and individuals. OCH is also working to leverage existing digital systems and certified payroll reporting in order to track progress with Community Hiring.

Referral Sources

To help connect City contractors and Community Hires for purposes of this program, the Charter allows the Director to establish a network of "referral sources." Referral Sources include union referral systems, which were deemed to be Referral Sources by the state legislation, as well as the public workforce system consisting of City agencies that provide workforce development services and entities contracted by the City to provide such services at no financial cost to the Community Hire. For all entities other than union referral systems, agency referrals and contracted vendors, the Director is authorized to issue a solicitation to identify a broader pool of Referral Sources that could include other entities that provide job placement or career development services, or specialized services for particular populations of Community Hires, including, but not limited to, individuals with disabilities, justice-involved individuals, veterans, and young adults who are not connected to school or work. The Director will publish a directory of approved Referral Sources.

Some public comments recommended establishing requirements in the rules for coordination and management of the Referral Sources. OCH concurs that fostering a strong relationship among the Referral Sources is integral to Community Hiring referrals but finds that a rule change is not needed. Since last December, OCH has been engaging with agency partners and community-based organizations with experience in employment recruitment services and other workforce development services to inform the rules and will continue to build this network.

Scope of Applicability

These rules set the threshold for application of Community Hiring Goals as procurement contracts valued over 3 million dollars. This threshold was identified after consideration of stakeholder feedback, as well as data on contract value and volume. The Director has determined that this dollar threshold promotes the objectives of Community Hiring and aligns with the City's interests in promoting competition and streamlining the procurement process, especially for small human services providers and small businesses, including minority- and women-owned business enterprises (M/WBEs). Contracts designated for mentoring programs pursuant to Sections 1206 or 1309 of the Charter are exempt from Community Hiring requirements in order to preserve the objectives of these types of contracts and encourage the participation of M/WBEs and small businesses. Nonetheless, contractors and subcontractors with Transactions below the

threshold are not precluded from leveraging Community Hiring resources, such as the network of Referral Sources.

Some public comments suggested adding additional exemptions from Community Hiring. While OCH recognizes that certain industries and services may be impacted by Community Hiring differently, the rules allow for the adjustment of goals where appropriate.

Community Hiring Goal-Setting

These rules establish the following workforce goals for particular types of procurement contracts, referred to as “transactions,” but allow for adjustment of these goals based on an alternative goal-setting framework set forth in the Charter, or an adjusted numerical goal, where appropriate. The proposed rules would exempt 12 different types of contracts from Community Hiring goals.

(See Table of Community Hiring Goals below as well).

- For transactions involving building service work, the Community Hiring Goal is for 30 percent of the building service opportunity labor hours performed in connection with the transaction to be performed by Residence-Based Community Hires.
- For transactions involving construction work, in accordance with subdivision f of Section 3502 of the Charter, the applicable goal depends on whether the transaction is subject to a project labor agreement (PLA)—a pre-hire collective bargaining agreement with the City establishing a labor organization or its affiliates as the collective bargaining representative for all the workers who will perform construction work. For transactions involving construction work that are not subject to a PLA, the Community Hiring Goal is for 30 percent of the cumulative hours of construction work performed in connection with the transaction to be performed by Residence-Based Community Hires. Under these rules, agencies have the discretion, based on consideration of project needs and anticipated vendor capacity, to set apprenticeship goals that are consistent with the maximum ratios of apprentices to journey-level workers. For transactions involving construction work that are subject to a PLA, the employment goal set forth in the PLA governs.
- For transactions involving professional services, human services, or standard services, except for building service work, the goal is based on the total value of the transaction. The Community Hiring Goal would be to hire one Income-Based Community Hire for every \$500,000 in total value of the transaction. Goal-setting based on the value of the transaction allows contractors and subcontractors to employ Community Hires in positions that are not directly related to the services provided under the particular transaction. This goal-setting framework allows contractors and subcontractors with more than one transaction subject to Community Hiring requirements to aggregate the goals on the transactions, easing the administrative burden of monitoring goals and increasing the variety of opportunities that can be filled by Income-Based Community Hires. The rules have been revised to further clarify that the hiring of an Income-Based Community Hire will not be credited towards the achievement of more than one goal.

Table of Community Hiring Goals	
Building Service Work	30 percent of the building service opportunity labor hours performed in connection with the transaction to be performed by Residence-Based Community Hires
Construction Work (Not Subject to PLA)	30 percent of the cumulative hours of construction work performed in connection with the transaction to be performed by Residence-Based Community Hires
Construction Work (Subject to PLA)	The employment goal outlined in the applicable PLA will apply
Professional Services, Human Services, or Standard Services	One Income-Based Community Hire for every \$500,000 in total value of the transaction

One public comment recommended adding additional requirements concerning retention and termination of Community Hires, as well as wages paid to Community Hires. OCH appreciates the importance of ensuring that Community Hires are connected to good quality jobs. Given the variables across different industries and employers' needs, OCH finds that encouraging employers to retain and invest in Community Hires would be more effective in advancing the Community Hiring objectives than imposing rigorous criteria for qualifying employment. Therefore, the rules have been revised to further clarify that the quality of the jobs and support provided to Community Hires will be a factor to be considered in any determination of whether a Contractor has made best efforts. In addition, the rules have been revised to clarify that individuals hired for internships, externships and fellowships will not be counted towards Community Hiring Goals, and that an individual hired for a temporary position will be counted toward such a goal only when the individual is hired to perform services under a Transaction for services that are temporary in nature.

Compliance

Failure to comply with these rules can result in civil penalties in the amount of \$2,500 for failure to demonstrate best efforts to meet the applicable Community Hiring Goal, and \$1,000 per week for failure to demonstrate required corrective action taken to remedy the non-compliance.

OCH received recommendations related to stronger enforcement of Community Hiring requirements. The rules are intended to encourage compliance with new requirements without becoming overly burdensome. The non-compliance determination and its procedure seek to work with vendors to bring them into compliance while reserving the ability for the penalty amount to accrue for vendor's deliberate disregard of the Community Hiring requirements or repeated failures. In addition, the rules have been revised to underscore the fact that Community Hiring requirements will be incorporated into covered contracts and will therefore be among the criteria

as to which a Contractor's performance can be evaluated pursuant to the Procurement Policy Board Rules.

OCH has also received comments concerning the challenges of meeting Community Hiring Goals. In accordance with Section 3502(e) of the Charter, the rules provide that vendors are not required to undertake an undue financial burden, terminate existing employees, or extend a job offer for labor that wouldn't be commercially useful in order to meet Community Hiring Goals. In response to these comments, the rules have been revised to clarify that "the cumulative value of contracts held by a Contractor that are subject to Community Hiring is one of the factors to be considered in assessing the existence of "undue financial burden."

The new material is underlined.

Deleted material is [bracketed].

"Shall" and "must" denote mandatory requirements and may be used interchangeably in the rules of this office, unless otherwise specified or unless the context clearly indicates otherwise.

SECTION 1. The Rules of the City of New York are amended by adding a new Title 74, to read as follows:

Title 74: Community Hiring

Chapter 1: General Provisions.

§ 1-01 Short Title. These Rules are known and may be cited as "Community Hiring Rules."

§ 1-02 Definitions. As used in this title, the following terms have the following meanings:

Absorption Hire. The term "absorption hire" means an individual who fills a building service opportunity and who: (i) was employed to perform building service work within the preceding six months at the same facility to which such individual is assigned; or (ii) fills such building service opportunity as a result of a reassignment by a contractor or subcontractor, as applicable, due to a displacement caused by the closure of another facility, a staffing reduction at another facility, or any other similar event.

Apprentice. The term "apprentice" means an individual who is receiving training and performing labor pursuant to an apprenticeship agreement.

Apprenticeship Agreement. The term "apprenticeship agreement" means an agreement, as such term is defined by Section 816 of the Labor Law, that has been registered with, and approved by, the Commissioner of Labor of the State of New York pursuant to Article 23 of the Labor Law.

Building Service Opportunity. The term "building service opportunity" means an employment opportunity to perform building service work.

Building Service Opportunity Labor Hour. The term "building service opportunity labor hour" means a labor hour performed by an individual employed to fill a building service opportunity.

Building Service Work. The term "building service work" means the classifications of labor that the applicable fiscal officer has identified as consistent with Section 230 of the Labor Law, regardless of whether such labor constitutes building service work for which workers are entitled to prevailing wages pursuant to Article 9 of the Labor Law.

Charter. The term "charter" means the New York City Charter.

City. The term "city" means the City of New York.

City-Affiliated Not-for-Profit Corporation. The term "city-affiliated not-for-profit corporation" means a local development corporation or other not-for-profit corporation, a majority of whose members are appointed by the Mayor.

City Chief Procurement Officer (CCPO). The term "city chief procurement officer" means the person to whom the Mayor has delegated authority to coordinate and oversee the procurement activity of mayoral agencies as defined in Section 1-01 of Title 9 of the Rules of the City of New York.

Community Hire. The term "community hire" means an individual whose employment can be credited towards the achievement of the employment goal pursuant to this title.

Community Hiring Goal. The term "community hiring goal" means the employment goal set on certain transactions for the participation of Community Hires.

Construction Work. The term "construction work" means: (i) any labor of a type that the applicable fiscal officer, as defined in paragraph e of subdivision 5 of Section 220 of the Labor Law, has identified in a published schedule as a classification of work performed by laborers, workers or mechanics, regardless of whether such labor constitutes public work pursuant to such section; and (ii) any additional types of labor identified by the director by rule, provided that such labor shall not include building service work.

Contractor. The term "contractor" means an individual, company, corporation, partnership, or other entity that has entered into a transaction with the City, including, but not limited to, vendors providing human services, standard services, professional services, construction-related services, and construction, as such terms are defined in Section 1-01 of Title 9 of the Rules of the City of New York, to the City, except that the term "contractor" does not include: (i) any governmental entity; or (ii) any labor organization.

Director. The term "director" means the director of the Office of Community Hiring and Workforce Development or their designee.

Economically Disadvantaged Region. The term "economically disadvantaged region" means an area, represented by its five-digit ZIP code, in which at least 15 percent of residents have household incomes below the federal poverty threshold.

Employment Opportunity. The term "employment opportunity" means a vacancy in a position to perform services under a transaction.

Labor Organization. The term "labor organization" means any organization, agency or employee representation committee or plan as defined in Section 152 of Title 29 of the United States Code, or any successor provision.

Mayoral Agency. The term "mayoral agency" includes: (i) any agency the head of which is appointed by the Mayor; (ii) any agency headed by a board, commission, or other multi-member body, the majority of the membership of which is appointed by the Mayor; and (iii) the office of the Mayor.

Project Labor Agreement. The term "project labor agreement" means a pre-hire collective bargaining agreement entered into between the City and a bona fide building and construction trade labor organization establishing the labor organization or its affiliates as the collective bargaining representative for all persons who will perform construction work on a transaction, provided such agreement: (i) provides that only contractors and subcontractors who sign a pre-negotiated agreement with the labor organization can perform such work on such transaction; and (ii) includes goals for the employment of qualified Residence-Based Community Hire to perform such work.

Referral Source. The term "referral source" means an individual, company, corporation, partnership, agency, union referral system, or other entity selected pursuant to paragraph 3 of subdivision a of Section 3502 of the New York City Charter to make referrals of candidates to contractors, prospective contractors, subcontractors, and prospective subcontractors for the purposes of meeting the applicable employment goals set forth in such section; provided that any union referral system shall be deemed an approved referral source for the purposes of paragraph 3 of subdivision a of Section 3502 of the New York City Charter.

Subcontractor. The term "subcontractor" means an individual, company, corporation, partnership or other entity that has entered into an agreement with a contractor or another subcontractor in order to perform services or any other obligation under a transaction, provided that such agreement involves the performance of construction work of any value, or the total dollar value of such agreement exceeds \$20,000, and further provided that the term "subcontractor" does not include: (i) employees; (ii) governmental entities; or (iii) labor organizations.

Transaction. The term "transaction" means a procurement contract, except that the term "transaction" shall not include any exempt transaction.

Union Referral System. The term "union referral system" means a labor organization that has an affiliated registered apprentice program with direct entry access from one or more pre-apprentice programs that are compliant with United States Department of Labor and New York State

Department of Labor regulations, as well as any labor organization with an affiliated community recruitment program.

§ 1-03 Scope.

a. General Applicability. This title governs the application of Community Hiring Goals to Transactions awarded by a Mayoral Agency. Except as set forth below, this title applies to procurements for human services, standard services, professional services, construction-related services and construction, as such terms are defined in Section 1-01 of Title 9 of the Rules of the City of New York.

b. Exempt Transactions. The following are not subject to this title:

1. contracts procured pursuant to Section 162 of the State Finance Law;

2. contracts for the performance of services by a City-Affiliated Not-For-Profit Corporation;

3. contracts the principal purpose of which is the supply of goods, except where the principal purpose of the Transaction is for delivery services;

4. contracts in an amount below the small purchase threshold as set pursuant to the authority and procedure set forth in subdivision a of Section 314 of the Charter;

5. contracts for investigative or confidential services as defined in subdivision (e) of Section 1-01 of Title 9 of the Rules of the City of New York;

6. contracts subject to federal or state funding requirements that preclude or substantially conflict with the application of Community Hiring Goals under this title;

7. contracts awarded through the United States General Services administration, or through the New York State Office of General Services;

8. contracts for emergency demolition services procured by the Department of Housing Preservation and Development pursuant to the procedure set forth in Section 315 of the Charter;

9. contracts for which contractor selection is made by an elected official other than the Mayor or an agency other than a Mayoral Agency, except as otherwise provided by the Director;

10. contracts subject to subdivision (f) of Section 1-02 of Title 9 of the Rules of the City of New York;

11. contracts designated for inclusion in a mentoring program as defined in Section 1206 or 1309 of the Charter;

12. contracts for banking services, electronic payment services, or other related services procured by the New York City Department of Finance; or

13. any other types of contracts based on a determination by the Director that the application of Community Hiring Goals would substantially undermine the primary objective of that type of contract.

§ 1-04 Format. Any document required to be maintained or submitted pursuant to this title may be maintained and submitted in an electronic format. The Director may require electronic submission of documents in a system maintained or controlled by the City. Documents submitted in paper form, in lieu of electronic submission, must be submitted in a manner approved by the Director.

Chapter 2. Community Hires.

§ 2-01 Criteria. An individual may be certified as a Community Hire based on either residence or income.

a. Residence-Based Community Hire. A Residence-Based Community Hire is an individual who is certified as residing in one of the following:

1. an Economically Disadvantaged Region as identified by the Director;

2. a building that is both:

(a) owned or operated by the New York City Housing Authority, and

(b) subject to Section 9 of the United States Housing Act of 1937, as amended; or

3. a dwelling unit that is both:

(a) subject to a regulatory agreement with a federal, state or local government agency requiring that occupancy of such unit be restricted based on the income of the occupants, and

(b) located in a building that was previously operated by the New York City Housing Authority, was previously subject to Section 9 of the United States Housing Act of 1937, as amended, and is subject to Section 8 of such act.

b. Income-Based Community Hire. An Income-Based Community Hire is an individual who is certified as having an individual or household income that falls below

300 percent of the federal poverty guidelines. For purposes of this subdivision, such individual or household income does not include the following public benefits:

1. Cash Assistance;
2. Housing Assistance Voucher;
3. Temporary Aid to Needy Families (TANF);
4. Supplemental Security Income (SSI);
5. Supplemental Nutrition Assistance Program (SNAP);
6. Medicaid; and
7. any other similar public benefit provided by the federal government or a state or local government that is identified by the Director on a website maintained or controlled by the City.

§ 2-02 Certification

a. Certification of Residence-Based Community Hire.

1. Referral Sources approved pursuant to Section 3-02 must identify individuals who meet the applicable residence requirements set forth in subdivision a of Section 2-01 for purposes of making referrals to Contractors and Subcontractors with Community Hiring Goals. Contractors and Subcontractors may also identify existing employees who meet such requirements.
2. A prospective Residence-Based Community Hire identified by a Referral Source must submit to the Referral Source a signed self-certification statement, in a manner prescribed by the Director, that lists an address of residence that meets the criteria set forth in subdivision a of Section 2-01, unless a Referral Source has an approved certification procedure pursuant to the paragraph 3 of this subdivision. Such individual will be deemed certified as a Residence-Based Community Hire upon submission of such self-certification statement to the Referral Source.
3. Where a Referral Source demonstrates, to the satisfaction of the Director, that it has data sources or administrative processes that can be used for the certification of Residence-Based Community Hires, the Referral Source may certify a prospective Residence-Based Community Hire using such data sources or processes.
4. A Referral Source that refers a Residence-Based Community Hire to a Contractor or Subcontractor with a Community Hiring Goal must inform such Contractor or Subcontractor of the certification of such Community Hire. If any

information relied upon for the certification changes, the individual must inform the Referral Source and provide the updated information by no later than the time of referral.

5. For employees not identified by a Referral Source, information submitted by such employee to a Contractor or Subcontractor for purposes of payroll records in accordance with applicable federal, state, and local laws and regulations is sufficient for purposes of certification. Such employee will be deemed certified as a Residence-Based Community Hire upon the Contractor's or, if applicable, the Subcontractor's submission of a certified payroll report for compliance with applicable federal, state, or local prevailing or living wage requirements. Contractors and Subcontractors must require employees to provide an updated address if their residence changes.

b. Certification of Income-Based Community Hire.

1. Referral Sources approved pursuant to Section 3-02 must identify individuals who meet the applicable income requirements set forth in subdivision b of Section 2-01 for purposes of making referrals to Contractors and Subcontractors with Community Hiring Goals.

2. A prospective Income-Based Community Hire identified by a Referral Source must submit to the Referral Source a signed statement, in a manner prescribed by the Director, attesting to meeting the applicable income requirements set forth in subdivision b of Section 2-01, unless a Referral Source has an approved certification procedure pursuant to the paragraph 3 of this subdivision. Such individual will be deemed certified as an Income-Based Community Hire upon submission of such self-certification statement to the Referral Source.

3. Where a Referral Source demonstrates, to the satisfaction of the Director, that it has data sources or administrative processes that can be used for the certification of Income-Based Community Hires, the Referral Source may certify an Income-Based Community Hire using such approved data sources or processes.

4. A Referral Source that refers an Income-Based Community to a Contractor or Subcontractor with a Community Hiring Goal must inform such Contractor or Subcontractor of the certification of such Community Hire. If any information relied upon for the certification changes, the individual must inform the Referral Source and provide the updated information by no later than the time of referral.

Chapter 3. Referral Source.

§ 3-01 General. The Contractor or Subcontractor may request referral to a Community Hire from a Referral Source approved by the Director for the purposes of meeting the applicable Community Hiring Goal set forth in Chapter 4 of this title.

§ 3-02 Network of Referral Sources.

a. Directory of Referral Sources. The Director will maintain and publish on a website maintained or controlled by the City a directory of Referral Sources approved pursuant to this section that perform employment recruitment services or other workforce development services.

b. Criteria. The factors that the Director may consider when evaluating prospective Referral Sources, include, but are not limited to:

1. any pre-existing agreement with an agency for employment recruitment services or other workforce development services;
2. current and past experience with workforce development programs or initiatives;
3. references, past performance and reliability working with workforce development programs with different legal requirements;
4. organization, staffing and operational capability to undertake the services necessary to advance employment of Community Hires;
5. relevant experience, operational capability and availability of resources to serve a particular population of Community Hires;
6. financial capability, responsibility and availability of appropriate resources for the type and complexity of the services;
7. record of compliance with all applicable federal, state, and local laws, regulations, licensing and funding requirements;
8. ability to comprehensively address the needs of the Contractors and Subcontractors to meet the Community Hiring Goals;
9. ability and reliability to develop quality assurance for monitoring and reviewing performance indicators, including the availability of appropriate technology and resources for data management and quality improvement;
10. experience with entering data into multiple data systems and mechanisms and ability to transfer such data to the Director and agencies, upon request; and
11. record of maintaining harmonious labor relations.

c. Determination. The Director may approve a Referral Source using any of the following methods:

1. authorizing one or more entities, as appropriate, to function as Referral Sources based on responses to a publicly released solicitation that includes a description of the functions of a Referral Source, the manner in which responses must be submitted, and the criteria by which the responding entities will be evaluated for approval;
2. authorizing an agency, in writing, to function as a Referral Source; or
3. authorizing, in writing, an entity engaged pursuant to an agreement with an agency for employment recruitment services or other workforce development services to function as a Referral Source.
4. Notwithstanding the above, the Director will deem any Union Referral System identified in a Project Labor Agreement to be a Referral Source for the purposes of this title. For any Union Referral System that is not identified in a Project Labor Agreement, the Director will deem such Labor Organization to be a Referral Source, in writing, provided that the Labor Organization demonstrates that it has either:
 - (a) an affiliated registered apprentice program with direct entry access from at least one pre-apprentice program compliant with United States Department of Labor and New York State Department of Labor regulations;
or
 - (b) an affiliated community recruitment program.

§ 3-03 Responsibilities. A Referral Source must perform, at minimum, the following responsibilities:

- a. identify individuals who meet the applicable requirements for certification pursuant to Chapter 2 of this title;
- b. assist prospective Community Hires with preparation of self-certification statements for purposes of certification, where applicable;
- c. maintain, for each Community Hire, the proof of certification and a record of services provided, including, but not limited to employment recruitment;
- d. provide Contractor, Subcontractor, prospective Contractor or prospective Subcontractor with proof of the individual's certification as a Community Hire, where applicable;
- e. establish screening procedures or systems to identify prospective Community Hires;

f. provide, without financial costs to the Community Hires, employment recruitment services or other workforce development services;

g. enroll in an electronic system designated by the Director; and

h. cooperate in any audit by the Director, including any inspection of documents related to services performed as a Referral Source.

§ 3-04 Performance Review. The Director will monitor the performance of Referral Sources. The Director may terminate or suspend a Referral Source where the Director has been presented with sufficient information demonstrating any of the following:

a. inactivity or refusal to perform the responsibilities set forth in Section 3-03 of this chapter or other workforce development services for a particular population of Community Hires;

b. failure or refusal to enroll and maintain an active account in an electronic system designated by the Director;

c. fraudulent or bad faith acts; or

d. failure or refusal to cooperate with the Office of Community Hiring and Workforce Development.

Chapter 4. Community Hiring Goals.

§ 4-01 Transactions with an Original Value of 3 Million Dollars or Less. [Reserved]

§ 4-02 Transactions with an Original Value of More Than 3 Million Dollars. A Transaction with an original value of more than 3 million dollars must include a Community Hiring Goal as set forth in this section.

a. Community Hiring Goals for Transactions for Building Service Work.

1. Community Hiring Goal. For each Transaction involving Building Service Work, the Community Hiring Goal is for 30 percent of Building Service Opportunity Labor Hours to be performed by Residence-Based Community Hires as defined in subdivision a of Section 2-01.

2. Alternative Goal Setting Method. Where setting a goal based on the percentage of Building Service Opportunity Labor Hours to be performed by Residence-Based Community Hires is not feasible for a Transaction for services subject to this subdivision, the Mayoral Agency, in consultation with the Director, may set a Community Hiring Goal for a specified percentage of Building Service Opportunities to be filled by Residence-Based Community Hires.

3. Absorption Hires. In calculating the Community Hiring Goal applicable to a Transaction involving Building Service Work, neither the Building Service Opportunity Labor Hours performed by Absorption Hires nor the Building Service Opportunities filled by Absorption Hires shall be considered.

b. Community Hiring Goals for Transactions for Construction.

1. Community Hiring Goal. For each Transaction involving Construction Work, except where a Transaction is subject to a Project Labor Agreement, the Community Hiring Goal is for 30 percent of cumulative hours of Construction Work to be performed by Residence-Based Community Hires as defined in subdivision a of Section 2-01.

2. Apprenticeship Goal. For each Transaction involving Construction Work, except where a Transaction is subject to a Project Labor Agreement, the Mayoral Agency may determine the appropriate percentage of the Community Hiring Goal to be performed by Apprentices who are qualified Residence-Based Community Hires, to the extent feasible consistent with the maximum ratios of Apprentices to journey-level workers as established by the New York State Department of Labor. Construction Work performed by Apprentices who are Residence-Based Community Hires shall be credited towards the achievement of both the Community Hiring Goal and the Apprenticeship Goal.

3. Employment Goal Established in Project Labor Agreements. Where a Transaction involving Construction Work is subject to a Project Labor Agreement and such Project Labor Agreement includes numerical goals regarding the sourcing for the hiring of Residence-Based Community Hires and Apprentices, the goals set forth in such Project Labor Agreement shall apply to the Transaction.

c. Community Hiring Goals on Transactions for All Other Services

1. Community Hiring Goal. For each Transaction involving professional services, human services, and standard services except for Building Service Work, the Community Hiring Goal is to hire one Income-Based Community Hire for every \$500,000 in total value of the Transaction. The Income-Based Community Hire does not need to be hired to perform services on that Transaction but will not be credited towards the achievement of more than one Community Hiring Goal. The hiring of an Income-Based Community Hire for an internship, externship, or fellowship will not be credited towards the achievement of a Community Hiring Goal, and the hiring of an Income-Based Community Hire for a temporary position will be credited towards such goal only where the individual is hired to fill an Employment Opportunity for services that are temporary in nature.

2. Alternative Goal Setting Method. Where setting a goal based on the total value of the Transaction is not feasible on a Transaction for services subject to this subdivision, the Mayoral Agency, in consultation with the Director, may set a goal

that a specified percentage of the cumulative hours of labor be performed by Income-Based Community Hires, or a goal that a specified percentage of Employment Opportunities be filled by Income-Based Community Hires.

§ 4-03 Application of Community Hiring Goals. Prior to issuing a solicitation for a Transaction, the Mayoral Agency, in consultation with the Director, must consider whether the Community Hiring Goal set forth in this chapter is appropriate and may adjust the numerical goal as deemed necessary, based on consideration of the following:

- a. scope of the Transaction;
- b. availability of qualified Community Hires and Apprentices;
- c. nature of any Employment Opportunities that the Director expects will result from the Transaction;
- d. Community Hiring Goals set for previous, similar Transactions and the appropriateness of such goals for such Transactions; and
- e. any other similar factors as determined by the Director, in consultation with the City Chief Procurement Officer.

§ 4-04 Discretionary Application of Goals on Emergency Procurements. Notwithstanding any other provision of this title, Community Hiring Goals may be, but are not required to be, established for Transactions that are emergency procurement contracts procured pursuant to the procedure set forth in Section 315 of the Charter.

Chapter 5. Contractual Obligations.

§ 5-01 Contractor Responsibilities. For each Transaction subject to a Community Hiring Goal, the Contractor must agree to:

- a. make best efforts to employ Community Hires in order to meet the applicable Community Hiring Goal;
- b. require Subcontractors, if any, to agree to make best efforts to meet applicable Community Hiring Goal;
- c. publicly disclose Employment Opportunities, except that Contractors performing Construction Work pursuant to a Project Labor Agreement are not required to advertise Employment Opportunities for Construction Work;
- d. notify Referral Sources of the Community Hiring Goal and any vacancies to be filled;

- e. enroll in an electronic system designated by the Director; and
- f. monitor and document compliance with this title.

§ 5-02 Subcontractor Responsibilities. For each Transaction, except where a Transaction involves Construction Work subject to goals set forth in subdivision b of Section 4-02, all Subcontractors must agree to publicly disclose Employment Opportunities and make best efforts to extend offers of employment to qualified Residence-Based Community Hires or Income-Based Community Hires in order to meet the applicable Community Hiring Goals. For each Transaction involving Construction Work, except where such a Transaction is subject to a Project Labor Agreement, all Subcontractors must agree to make best efforts to employ qualified Residence-Based Community Hires in order to meet the applicable Community Hiring Goals.

§ 5-03 Demonstration of Best Efforts.

- a. Standard. Where a Community Hiring Goal is not met, the Contractor must demonstrate to the Director, or Mayoral Agency, that the Contractor and its Subcontractor(s), if any, exercised best efforts to meet such goal.
- b. Factors Considered. To determine whether the Contractor or, if applicable, its Subcontractor(s), exercised best efforts, the Director, or Mayoral Agency, shall consider the degree to which the Contractor or Subcontractor(s) endeavored to:
 - 1. review Community Hires' qualifications, as applicable, in good faith;
 - 2. advertise Employment Opportunities, as applicable, in a manner reasonably intended to attract qualified Community Hires, except that Contractors and Subcontractors performing Construction Work pursuant to a Project Labor Agreement shall not be required to advertise Employment Opportunities for Construction Work;
 - 3. coordinate with Referral Sources or apprenticeship programs, as applicable, in order to employ such candidates identified by such Referral Sources or apprenticeship programs, provided that for the Contractors and Subcontractors performing Construction Work pursuant to a Project Labor Agreement, the Director shall only consider the degree to which the Contractor or Subcontractor has endeavored to meet such Community Hiring Goal by complying with the referral provisions of such Project Labor Agreement;
 - 4. review and organize the work under the Transaction in order to eliminate obstacles to meeting such Community Hiring Goal;
 - 5. monitor and document the Contractor's and, if applicable, the Subcontractor's efforts to meet the Community Hiring Goal;

6. contact the Office of Community Hiring and Workforce Development at routine intervals to inform the Director of the efforts to meet the Community Hiring Goal; and

7. take all other commercially reasonable actions to meet the Community Hiring Goal, including efforts to retain, support, and train the Community Hires in a manner that promotes the objectives of this title.

c. Factors Not Considered. In exercising best efforts, neither the Contractor nor a Subcontractor is required to:

1. undertake an undue financial burden that is deemed to be excessive or unwarranted in view of factors including, but not limited to, the Contractor's size and, financial resources, and the cumulative value of contracts held by such Contractor that are subject to Community Hiring Goals;

2. terminate or reduce the work levels of any of a Contractor's or, if applicable, a Subcontractor's existing employees;

3. extend an offer of employment to an individual whose labor would not be commercially useful in view of factors including, but not limited to, the skills, expertise, or licenses relevant to the Contractor's work;

4. forgo filling Building Service Opportunities with Absorption Hires on Transactions for Building Service Work; or

5. forgo requesting, employing, or hiring any individuals or assigning individuals to perform Construction Work on Transactions for Construction Work in accordance with the terms of:

(a) an agreement with a Union Referral System to which a Contractor or Subcontractor is a signatory; or

(b) an agreement with a Referral Source for the sourcing of labor to which a Contractor or Subcontractor is a signatory, provided that such Contractor or Subcontractor demonstrates to the satisfaction of the Director that such agreement was entered into in furtherance of a bona fide interest in sourcing labor.

Chapter 6. Records and Reporting.

§ 6-01 Records.

a. Audit. Documents and data prepared or obtained in connection with a requirement of this title must be made reasonably available for submission to or inspection by the Director.

b. Contractor and Subcontractor. For each Transaction subject to a Community Hiring Goal, Contractors and Subcontractors must maintain, for a period of at least 6 years from the date of completion on such Transaction, records documenting:

1. publication of Employment Opportunities, if applicable;
2. the Community Hires employed through referral by a Referral Source;
3. labor hours performed by Community Hires in connection with the Transaction, including, but not limited to payroll records;
4. efforts to meet the Community Hiring Goal, including, but not limited to, records reflecting communications with the Office of Community Hiring and Workforce Development; and
5. compliance with or progress towards meeting the applicable Community Hiring Goal.

c. Referral Sources. All Referral Sources must maintain records documenting:

1. response(s) submitted to a Referral Source solicitation released pursuant to paragraph 1 of subdivision c of Section 3-02, if applicable, for a period of at least 6 years from the date of submission;
2. authorization as a Referral Source pursuant to paragraphs 2 and 3 of subdivision c of Section 3-02, if applicable, for a period of at least 6 years from the date of authorization; and
3. for each Community Hire, services provided pursuant to Section 3-03, for a period of at least 6 years from the date of last referral.

§ 6-02 Reporting.

a. Community Hiring Quarterly Report. The Director will publish quarterly a report pursuant to subdivision c of Section 3502 of the Charter on a website maintained or controlled by the City.

1. The report will include, for each Transaction, information demonstrating the Contractor's and, if applicable, each Subcontractor's progress towards meeting the applicable Community Hiring Goal.
2. The report will also include, in the aggregate, information demonstrating:
 - (a) the overall progress towards meeting the applicable Community Hiring Goal;

(b) the demographics of Community Hires and, if applicable, Community Hire Apprentices;

(c) the amount of compensation paid to Community Hires and, if applicable, Community Hire Apprentices, relative to the amount of compensation paid to all individuals employed by such Contractor or Subcontractor on such Transaction; and

(d) the total number of Community Hires employed, by type of Transaction.

3. Additional Source. Where the Director determines that the City's data sources are not sufficient to comply with the reporting requirements under this section, the Director may require the Contractor and, if applicable, its Subcontractor(s) to provide additional information.

b. Annual List of Economically Disadvantaged Regions. The Director will annually publish, on a website maintained or controlled by the City, an updated list of Economically Disadvantaged Regions within a 100-mile radius of the City or within the metropolitan area.

Chapter 7. Non-Compliance.

§ 7-01 Determination of Non-Compliance.

a. Scope. Failure to comply with any requirement under this title is a non-compliance. In addition to any other remedies established by law, rule, or regulation, the Mayoral Agency, in consultation with the Director, may impose civil penalties on a Contractor for its non-compliance and, if applicable, the non-compliance of any of its Subcontractors. Failure to meet a Community Hiring Goal alone will not be deemed as non-compliance subject to civil penalties unless the Contractor failed to demonstrate best efforts as set forth in Section 5-03. A Contractor may also be subject to civil penalties for failure to correct the non-compliance.

b. Notice of Non-compliance. When there is a finding of non-compliance, the Mayoral Agency, in consultation with the Director, will send written notice to the Contractor in a manner set forth in the contract. The Notice of Non-compliance must include, but need not be limited to, the following information:

1. a description of each instance of non-compliance and the reasons upon which the finding is based;

2. identification of the instances of non-compliance that require corrective action;

3. where applicable, the specific corrective action prescribed to remedy the non-compliance, the date and time by which the corrective action must be taken, and a list of the documents or information required to demonstrate performance of the corrective action, or instructions to propose a corrective action plan as defined under subdivision a of Section 7-02;

4. the amount of the applicable civil penalty, if any; and

5. instructions on how to respond to the non-compliance finding.

c. Contractor Response to Notice of Non-compliance. Within 45 calendar days of the date that the Notice of Non-compliance is sent by electronic means, or within a specified time agreed to by the parties in writing, a Contractor may submit a written response to a Notice of Non-compliance to the Mayoral Agency. The response must include all documents and information upon which the Contractor relies in support of the response. A Contractor's failure to submit a timely response will be deemed an admission of non-compliance and acceptance of the civil penalty, if any.

d. Final Agency Determination. Within 45 calendar days of the date that a Contractor's response is sent by electronic means, or within a specified time agreed to by the parties in writing, the Mayoral Agency, in consultation with the Director, will send to the Contractor a final written determination, setting forth the reasons for the determination, and the assessment of civil penalties. The Mayoral Agency must also send a copy of the Final Agency Determination to the Director. A Final Agency Determination of non-compliance with any requirement under this title is a failure to satisfy a contract requirement that may be considered for purposes of evaluating the Contractor's performance pursuant to Section 4-01 of Title 9 of the Rules of the City of New York.

§ 7-02 Corrective Action.

a. Determination of Corrective Action. Where the Mayoral Agency, in consultation with the Director, determines that the non-compliance may be remedied through corrective action, the Mayoral Agency may either:

1. prescribe a corrective action; or

2. request a corrective action plan from the Contractor.

b. Corrective Action Plan. A corrective action plan proposed by a Contractor must include the following information:

1. an explanation for each instance of non-compliance;

2. the specific action to be taken to remedy each instance of non-compliance; and

3. the amount of time necessary to complete each corrective action and whether an extension of any applicable time limit is sought.

c. Review of Corrective Action Plan. For the purpose of responding to the Notice of Non-compliance, Corrective Action Plans submitted by the Contractor will be subject to review and approval by the Director. Nothing in this section precludes the Contractor from taking any action to remedy or prevent recurrence of non-compliance.

d. Compliance with Corrective Action. To comply with the corrective action either prescribed by the Mayoral Agency pursuant to paragraph 1 of subdivision a of this section or as set forth in the Corrective Action Plan pursuant to paragraph 2 of subdivision a of this section, the Contractor must demonstrate the corrective action taken to the satisfaction of the Director. Demonstration of corrective action may result in waiving of civil penalties by the Mayoral Agency, in consultation with the Director. Failure to provide documentation to demonstrate the corrective action taken may be subject to civil penalties. The assessment of the civil penalties for such failure will be included in the Final Agency Determination pursuant to subdivision d of Section 7-01.

§ 7-03 Civil Penalties.

a. Schedule of Civil Penalties. The Mayoral Agency, in consultation with the Director, may impose penalties in accordance with the following penalty schedule:

<u>Citation</u>	<u>Description of Non-Compliance</u>	<u>Penalty</u>
<u>74 RCNY § 5-03</u>	<u>Failure to demonstrate best efforts to meet applicable Community Hiring Goal</u>	<u>\$2,500</u>
<u>74 RCNY § 7-02</u>	<u>Failure to demonstrate required corrective action taken to remedy the non-compliance</u>	<u>\$1,000 per week</u>