

City of Madison Engineering Division

# Best Value Contracting & Public Works Contracts

Summary of MGO 33.07(7) as Applied to 2008 & 2009 Public Works Contracts

John S. Fahrney, Construction Engineer & Johanna Johnson, Public Works Contract Bidding  
Specialist  
2/11/2010

## Introduction

The City of Madison's "Best Value Contracting" Ordinance (Madison General Ordinance 33.07(7)) for public works contracts went into effect January 1, 2008. Best Value Contracting is intended to be "a set of enforceable qualifications that create a single point of accountability, performance qualifications, workforce development, and effective oversight/program transparency on publicly funded projects."<sup>1</sup> The ordinance also includes a provision for a two-year review to measure outcomes. This report shall serve as that review by providing a brief history of Best Value Contracting and illustrate how it has been applied to public works projects.

## History

By enacting "Best Value Contracting," or BVC, the City of Madison was following the lead of the State of Wisconsin and other municipalities across the country in addressing a looming workforce shortage in the construction industry. In 2004, the Construction Users Roundtable, an industry authority, sounded an alarm that skilled craft labor shortages were causing "significant problems in staffing construction projects, resulting in escalating cost and schedule delays." The report also called for individual contractors [to] recognize the necessity and benefits of training their employees and be willing to invest in them."<sup>2</sup> The Construction Users Roundtable believed that nationally, 250,000 workers would need to be replaced every year to keep up with the demand of industry growth. In Dane County, leaders in the construction industry and elected officials were seeking proactive measures to stave off the effects of a workforce shortage.

On January 1, 2008, the State of Wisconsin took steps to address the looming workforce shortage by updating legislation and enacting Executive Order #108 regarding apprentices working on publicly funded projects that had been in place for 35 years. Contractors must be certified by the Wisconsin Department of Workforce Development as a Wisconsin Trade Trainer and participate in an acceptable apprenticeship program at levels prescribed by EO #108

## Best Value Contracting and City of Madison Public Works Contracts

The City's "Best Value Contracting" Ordinance is guided by EO #108. However, there are a couple of key differences between the State's and City's application. First, the State uses ratios of trades and journeyworkers to determine if an active apprentice is required to be employed by the company. The City requires a company have an apprentice based on meeting certain contract dollar value (computed yearly), the number of trades used on a project, and if the trade is considered to be apprenticeable by the DWD. Figure No. 1 (Page 2) illustrates the criteria City Engineering staff use in determining to what extent a contractor must comply with BVC. The second difference came about in 2009 when the City amended MGO 33.07(7). The City ordinance utilized the State prevailing wage compliance values to determine when a contract shall adhere to BVC requirements. The state lowered the minimum threshold for Prevailing Wage Compliance. The City, however, enacted an ordinance change to maintain the minimum dollar amounts with future adjustments per the Construction Cost Index that were in place prior to the State's revision.

## Summary of 2009 Best Value Contracting for Public Works Contracts

In 2009, Wisconsin State Statute 66.0903, using the Construction Cost Index, established the dollar amounts for single-trade and multi-trade projects that the City of Madison complied with (per Madison General Ordinance, 33.07(7)). These dollar values were \$48,000 for a single-trade and \$248,000 for multi-trade projects.

A "single-trade project" is defined as one in which a single trade accounts for more 85% or more of the total labor cost of such a project. A "multiple-trade project" is defined as one in which no single trade accounts for more than 85% of

---

<sup>1</sup> City of Madison press release, "Best Value Contracting: A Raincoat for the Perfect Storm." December 4, 2006.

<sup>2</sup> Ibid.

the total labor cost of such a project.”<sup>3</sup>

The City of Madison awarded 87 Public Works contracts in 2009. The following information is a “snapshot” of how Best Value Contracting requirements applied individually to General Contractor s (GC’s) and subcontractors.

### General Contractors and Best Value Contracting Requirements

Best Value Contracting (BVC) Requirements are determined on a contract-by-contract basis for both the GC and subcontractors. The process begins when the dollar value of the contract is known and the GC indicates which trades will work on the job. Figure 1 outlines the process.

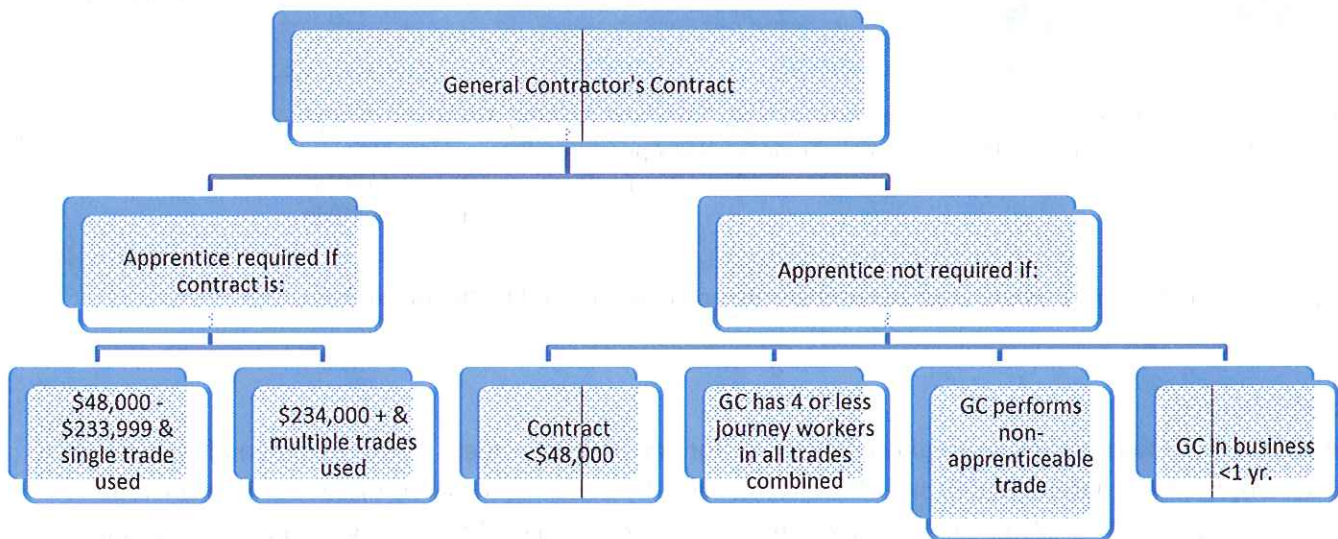


Figure 1

<sup>3</sup> Wisconsin Department of Workforce Development web site, [http://dwd.wisconsin.gov/er/prevaling\\_wage\\_rate/how\\_to\\_request\\_pw.htm](http://dwd.wisconsin.gov/er/prevaling_wage_rate/how_to_request_pw.htm)

**Breakdown by Contract**

Figure 2 represents how BVC requirements applied to individual contracts.

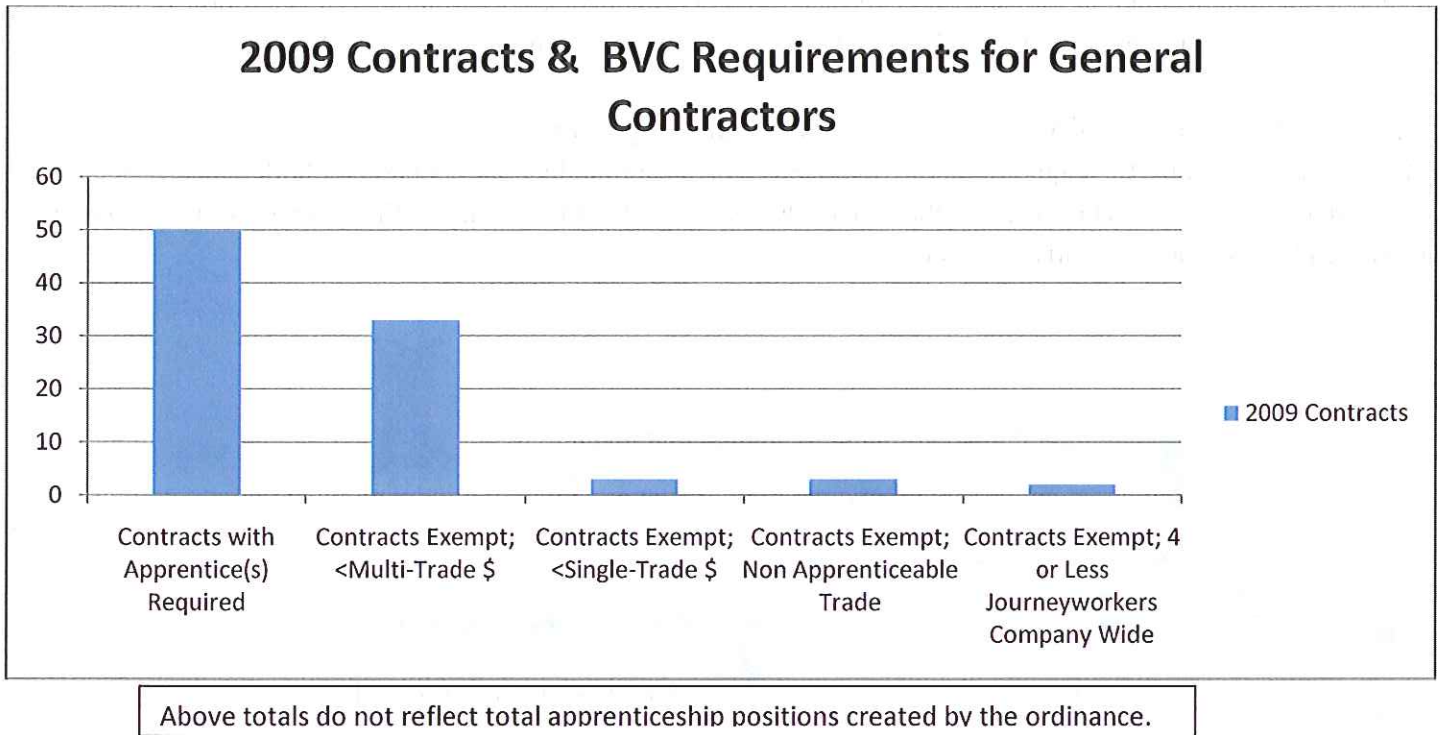


Figure 2

**Apprentice(s) Required**

On 50 contracts, the GC was required to employ apprentices for one or more trades. Documentation of an apprentice being employed by the GC is determined in one of two ways. First, by checking the DWD’s Active WisconsinTrade Trainer Listing report, which is available on the DWD web site. If the company is listed as having an active apprentice for the trade in question, the City’s apprenticeship requirement is considered to be satisfied. If this information does not appear on the DWD’s report, the second method of compliance is required. This entails receiving documentation from the applicable trade union or certified training body (e.g., ABC) of an apprentice being hired by the GC. The breakdown of apprentices by trade is available in a piechart on page 4.

**Multi-Trade Exemption**

On 32 contracts, the GC had a contract dollar value that was at least \$48,000 but less than \$248,000 and the GC provided documentation that they would be using more than one trade. Therefore, the GC was exempt from the apprenticeship requirement. Documentation of trades used is provided on two forms: The Best Value Contracting forms, which are part of the bid proposal (Pages E3-E4), and the Workforce Profile. The two forms are compared to ensure compliance.

**Single-Trade Exemption**

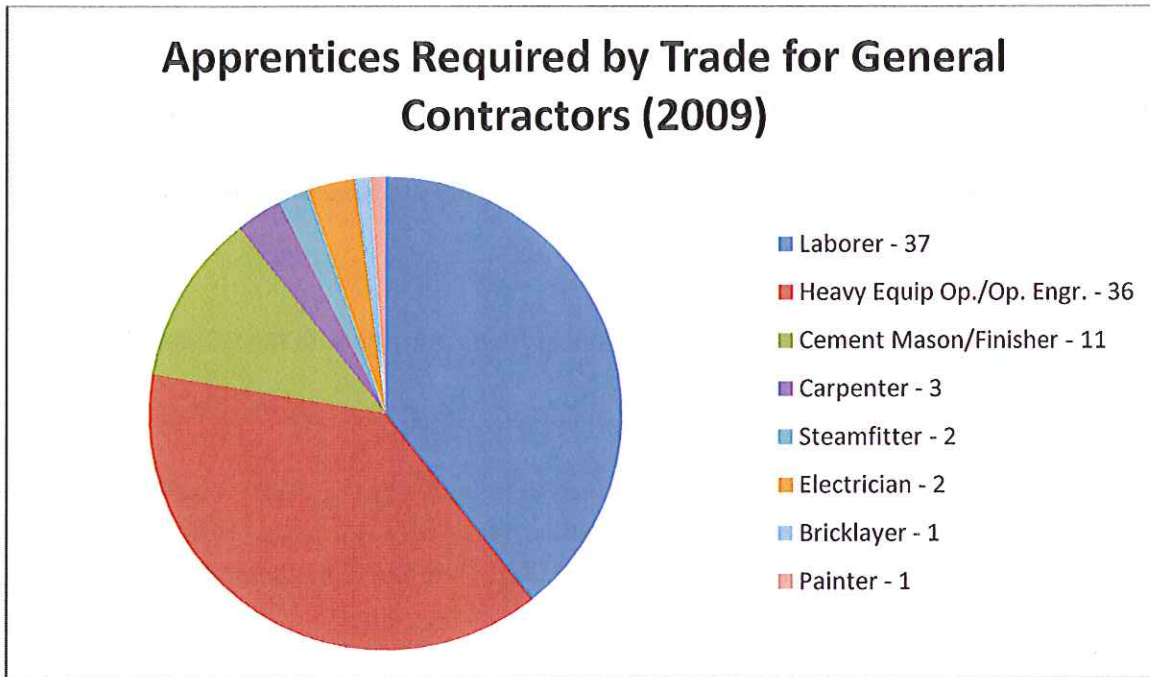
Three contracts were less than \$48,000 and the GC was exempt from the apprenticeship requirement.

**Four or Less Journeyworkers Employed Company-Wide**

Two contracts were awarded to GCs in this category. The GC indicates this exemption with the bid proposal ; that information is compared to information reported on the Workforce Profile (submitted while the contract is in the sign-up phase, and typically before the start of construction). Additionally, a random check of payroll reports was conducted.

### Breakdown of Apprentices by Trade (General Contractors)

Figure 3 represents the number of apprentices by trade that the GC either had actively employed at the time the City of Madison Public Works project was performed, or had to hire to meet the City's BVC requirement.

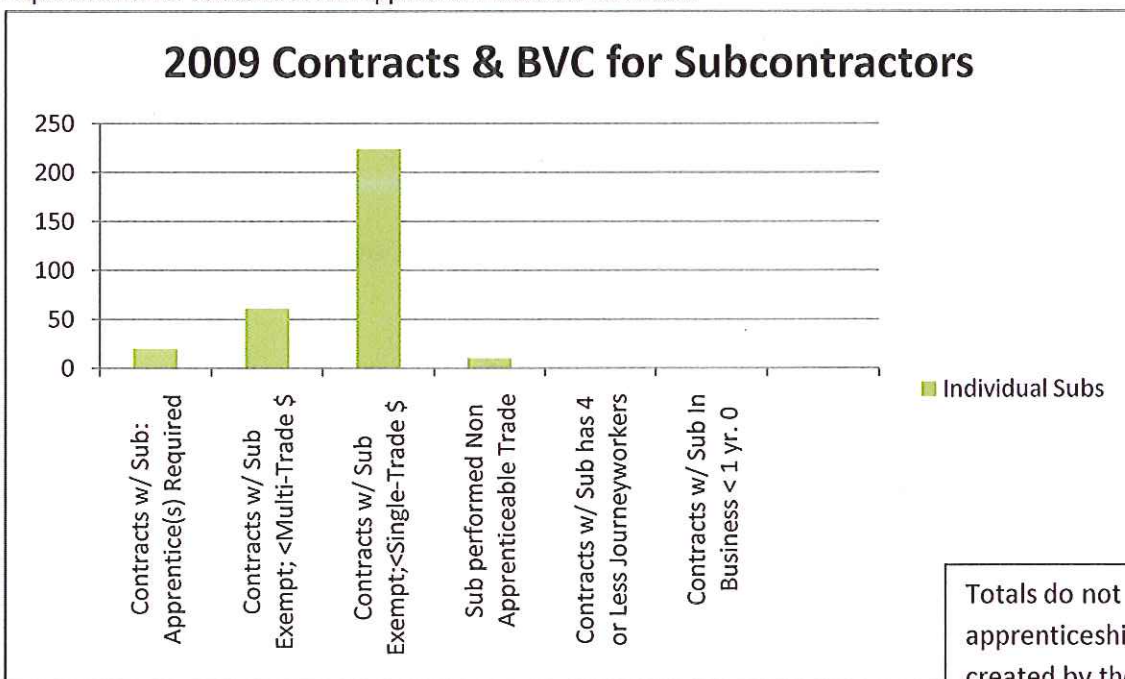


Above totals do not reflect total apprenticeship positions created by the ordinance.

Figure 3

### Subcontractors and Best Value Contracting Requirements For 2009

With the exception of subcontractor data for Contract 6348, South Madison Branch Library Interior Building, and Contract 6389, Blackhawk Road, which is incomplete at this time and therefore not included in the following data, Figure 4 represents how BVC requirements for subcontractors applied to individual contracts.



Totals do not reflect total apprenticeship positions created by the ordinance.

Figure 4

**Apprentice(s) Required**

20 subcontractors were required to employ apprentices for one or more trades. These subs were also required to become prequalified with the City of Madison, as the dollar value of their contract with the GC was greater than \$48,000.

**Multi-Trade Exemption**

61 subcontractors had a contract dollar value with a GC that was at least \$48,000 but less than \$234,000 and they provided documentation that they would be using more than one trade. These subcontractors were required to become prequalified with the City of Madison if they had not already done so, but did not have the apprentice requirement.

**Single-Trade Exemption**

In 224 instances, subcontractors were granted the single-trade exemption, as their contracts with the GC were less than \$48,000.

**Non-Apprenticeable Trade Exemption**

In 10 instances, the subcontractor performed a non-apprenticeable trade as determined by the DWD. Trades in this category include trucking, sawcutting, landscaping, traffic control and painting elevated water tanks. To be included in this category, the company had a contract with the GC that was at least \$48,000. They had to be prequalified with the City of Madison but did not have to meet the apprentice requirement.

**Four or Less Journeyworkers Company-Wide**

No subcontractors in this category.

**In Business for Less Than 1 Year**

No subcontractors in this category.

**Breakdown of Apprentices by Trade (Subcontractor)**

Figure 5 represents the number of apprentices by trade that the subcontractor either had actively employed at the time of the City Public Works project, or had to hire to meet the City’s BVC apprentice requirement.

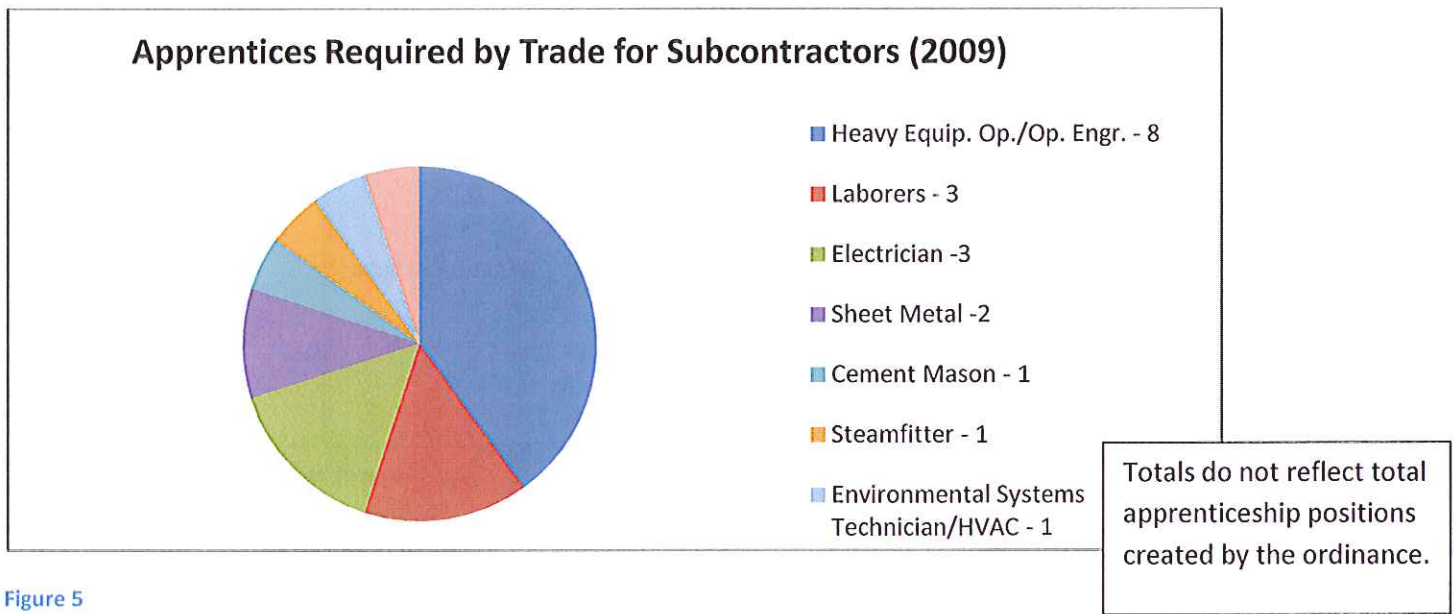


Figure 5

## Summary of 2008 Best Value Contracting for Public Works Contracts

In 2008, 90 Public Works Contracts were awarded. Of these, 10 contracts were considered to be “Pre-Best Value Contracting” because of when the contracts were advertised for bid (December 2007) and when bids were received/opened.

Wisconsin State Statute 66.0903 established the dollar amount for a single-trade project at \$45,000; Multi-trade projects were \$221,000 or greater.

Figure 6 represents how BVC requirements applied to individual contracts.

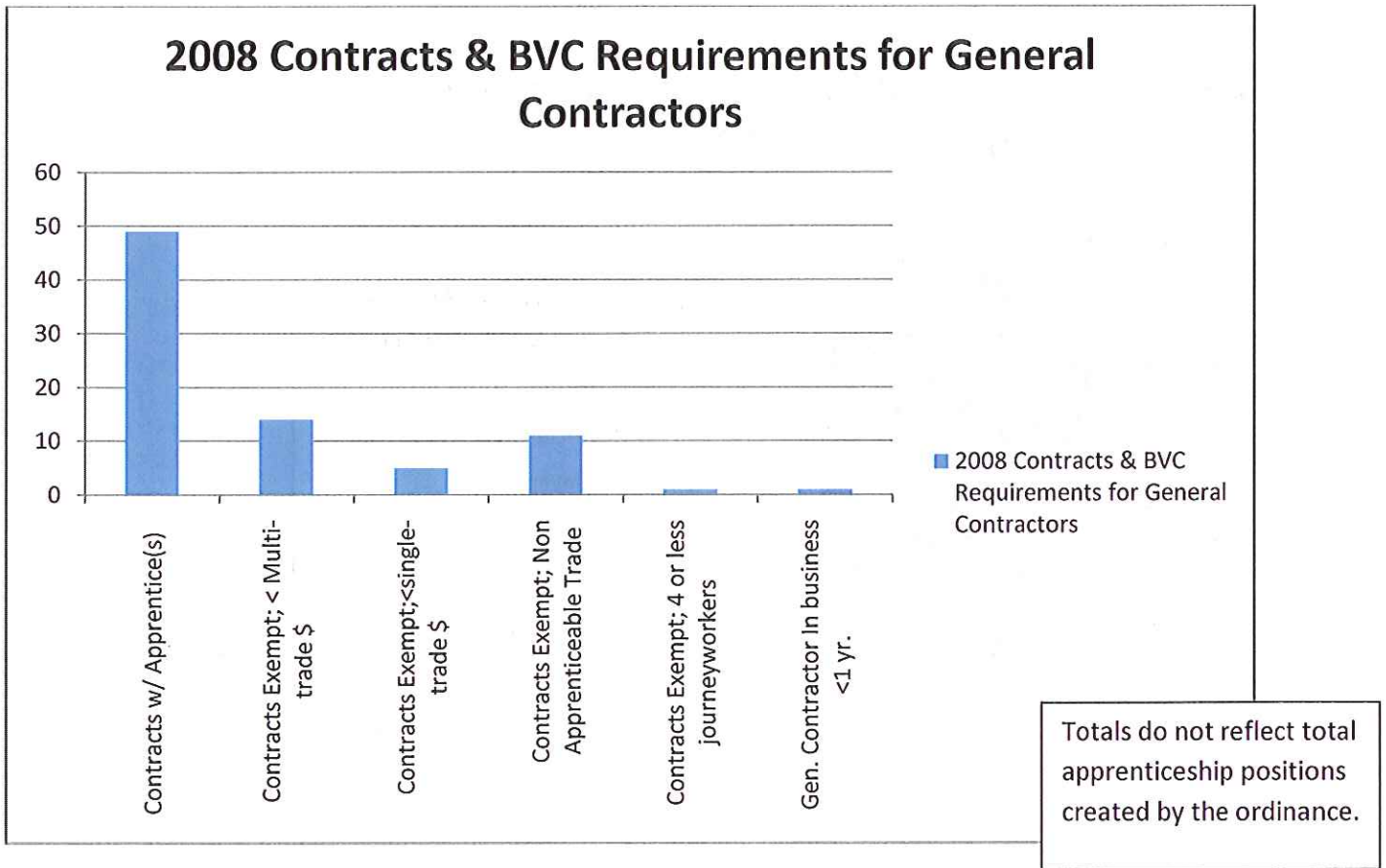


Figure 6

### Apprentice(s) Required

On 49 contracts, the GC was required to employ apprentices for one or more trades. Figure 7 represents the breakdown of apprentices by trade.

### Multi-Trade Exemption

On 14 contracts, the GC had a contract dollar value that was at least \$45,000 but less than \$221,000 and the GC provided documentation that they would be using more than one trade.

### Single-Trade Exemption

Five contracts were less than \$45,000 and the GC was exempt from the apprenticeship requirement.

### Four or Less Journeyworkers Employed Company-Wide

One contract was awarded to a GC with four or less journeyworkers.

### Business Less Than 1 Year Old

One contract was awarded to a GC who had been in business for less than one year. Company was able to participate in apprenticeship program in 2009.

### Breakdown of Apprentices by Trade

Figure 7 represents the number of apprentices by trade that the GC either had actively employed at the time the City of Madison Public Works project was performed, or had to hire to meet the City's BVC requirement.

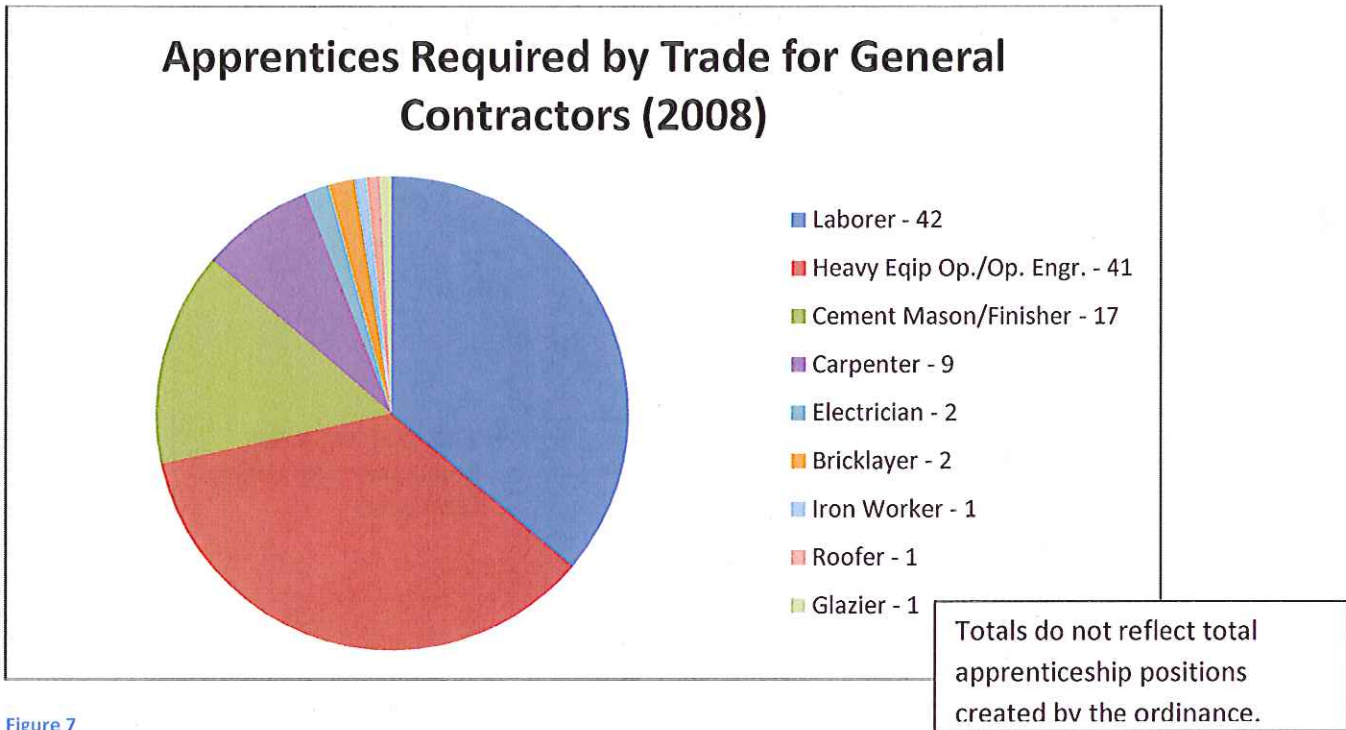


Figure 7



## Subcontractors and Best Value Contracting Requirements

Figure 8 represents how BVC requirements for subcontractors applied to individual contracts.

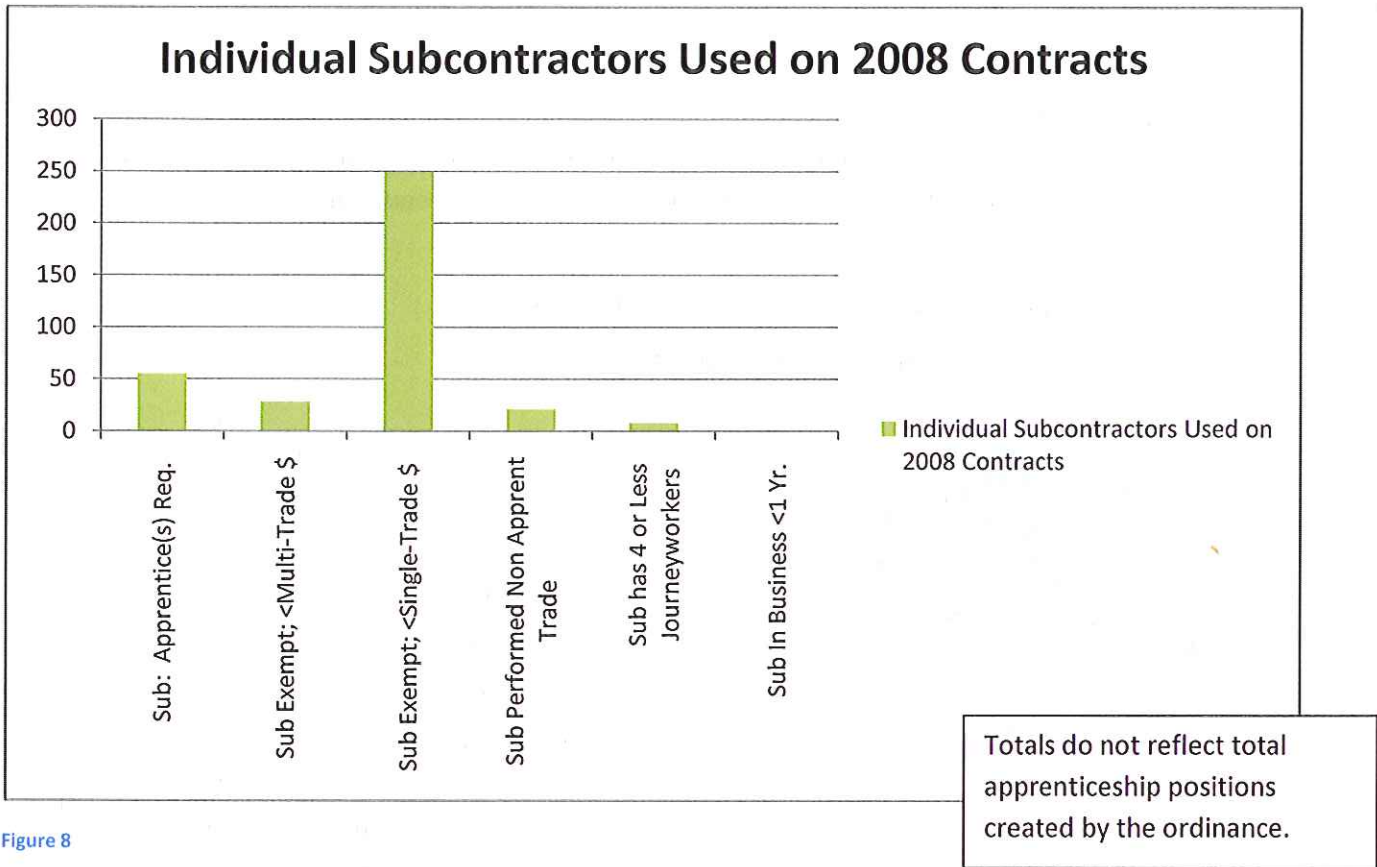


Figure 8

### Apprentice(s) Required

There were 55 instances of subcontractors being required to employ apprentices for one or more trades. These subs were also required to become prequalified with the City of Madison, as the dollar value of their contract with the GC was greater than \$45,000.

### Multi-Trade Exemption

28 subcontractors had a contract dollar value with a GC that was at least \$5,000 but less than \$221,000 and they provided documentation that they would use more than one trade. Subcontractors in this category are required to be prequalified with the City of Madison, but do not have the apprenticeship requirement.

### Single-Trade Exemption

In 249 instances, subcontractors were granted the single-trade exemption, as their contracts with the GC were less than \$45,000.

### Non-Apprenticeable Trade Exemption

In 21 instances, the subcontractor performed a non-apprenticeable trade as determined by the DWD. To be included in this category, the company had a contract with a GC that was at least \$48,000. They had to be prequalified with the City of Madison but did not have to meet the apprenticeship requirement.

### Four or Less Journeyworkers Company Wide

Eight subcontractors indicated this exemption on their Subcontractor Best Value Contracting Form.

### In Business For Less Than 1 Year

One subcontractor met this criteria.

### Breakdown of Apprentices by Trade

Figure 9 represents the number of apprentices by trade that the subcontractor either had actively employed at the time of the City Public Works project, or had to hire to meet the City's BVC apprenticeship requirement.

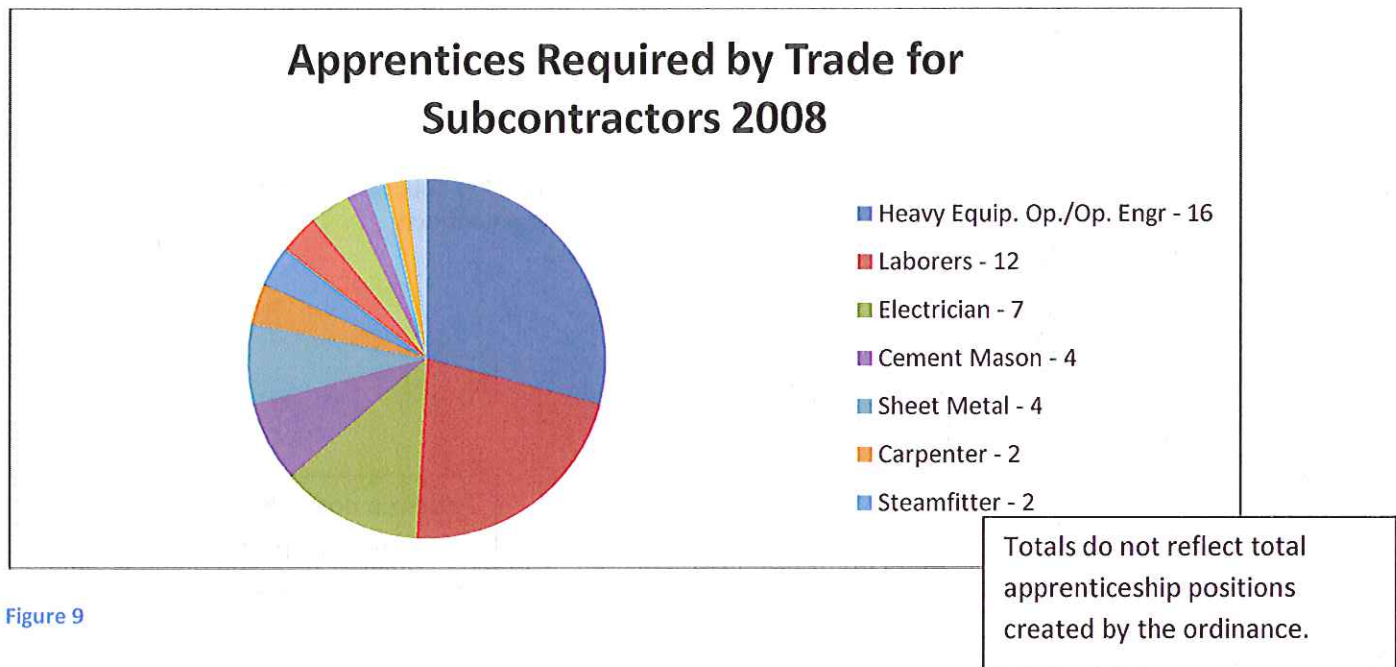


Figure 9

### Contractor Feedback Regarding Best Value Contracting

At the Quarterly Contractors/Developers/Engineers Meeting held on Wednesday, Feb. 10, 2010, contractors expressed two concerns regarding the City's BVC requirements.

First, the contractors said they disagreed with the requirement of having to have an apprentice actively employed before a journeyworker who is laid off is able to return to work.

This situation comes about as a result of the following ordinance language contained in 33.07(7)(k)(7): participate in a Class A Apprenticeship Program for each separate trade or classification in which it employs craft employees and continue to participate in such program or programs for the duration of the project. In applying this requirement, the City Engineer shall apply it to all crafts in the same manner as the State of Wisconsin applies the requirements of Wisconsin Executive Order 108 (June 29, 2005). Whereas the State has an exemption for documented depression of the local construction market .

The second issue is the State has a system in place to pre-certify that contractors are Active Trade Trainers. Language used in MGO 33.07(7) results in BVC requirements having to be demonstrated on a contract-by-contract basis. Contractors have asked that if the DWD considers a company to be pre-certified that the City also accept this classification.