

# NORTHAMPTON COUNTY COUNCIL - EASTON, PA

Ordinance No. 648 (amended)      SESSION    2018                      Bill No. 738

Introduced by Tara M. Zrinski and Lori Vargo Heffner on September 20, 2018

Enacted      October 5, 2018                                      Effective November 4, 2018

TITLE:    AN ORDINANCE OF NORTHAMPTON COUNTY, COMMONWEALTH OF PENNSYLVANIA, PROVIDING FOR THE ADOPTION OF CERTAIN PROCEDURES RELATED TO THE SOLICITATION AND AWARD OF PUBLIC CONTRACTS WITHIN NORTHAMPTON COUNTY; PROVIDING FOR CERTIFICATION REQUIREMENTS FOR PUBLIC CONTRACTORS; PROVIDING FOR CERTIFICATION REQUIREMENTS FOR SUBCONTRACTORS TO PUBLIC CONTRACTS; PROVIDING FOR PUBLIC CONTRACT REVIEW PROCESSES; REPEALING INCONSISTENT ORDINANCES OR PARTS OF ORDINANCES; CONTAINING A SAVINGS CLAUSE AND PROVIDING FOR AN EFFECTIVE DATE

**WHEREAS**, Northampton County (County) is duly empowered to enact certain laws needed to protect its proprietary and financial interests relating to major investments made by the County, as well as those relating to the public health, safety, and welfare for the citizens of the County; and

**WHEREAS**, the County has particular concerns regarding the challenges it faces in planning and executing public works construction projects, especially those relating to its ability to ensure the use of properly qualified contractors and subcontractors and adequate numbers of craft personnel who have industry recognized training in the respective skills and trades needed for future projects; and

**WHEREAS**, County Council concurrently adopts the resolution, as provided in Exhibit A, resolving to address the above-referenced challenges through appropriate procurement and contracting legislation as embodied in this ordinance and wishes to incorporate the terms of this resolution in their entirety as material terms of this ordinance.

**NOW, THEREFORE, BE IT ORDAINED AND ENACTED** by the Council of Northampton County, Commonwealth of Pennsylvania, repeals County Ordinance 639 and enacts in its place as follows:

## **SECTION 1**

### **§1. Purpose**

Northampton County recognizes that there is a need to ensure that all work on public construction and maintenance contracts is performed by responsible, qualified firms that maintain the capacity, expertise, personnel and other qualifications and resources necessary to successfully perform public contracts in a timely, reliable and cost-effective manner.

To effectuate the purpose of selecting responsible contractors for public contracts and to protect the County's investments in such contracts, prospective contractors and subcontractors, should be required to meet pre-established, clearly defined, minimum standards relating to contractor responsibility, including requirements and criteria concerning technical qualifications, competency, experience, adequacy of resources, including equipment, financial and personnel, and satisfactory records regarding past project performance, safety, law compliance and business integrity.

Further, due to the critical impact that skilled construction craft labor has on public works projects, and due to the limited availability of skilled construction craft labor and imminent craft labor skill shortages, it is necessary to require contractors and subcontractors to participate in established, formal apprenticeship training programs as a condition of bidding, for the purpose of both promoting successful project delivery and ensuring future workforce development.

Therefore, the County shall require compliance with the provisions of this ordinance by business entities seeking to provide services to the County as specified herein. The requirements of this ordinance are intended to supplement, not replace, existing contractor qualification and performance standards or criteria currently required by law, public policy or contracting documents. However, in the event that any of the provisions of this ordinance conflict with any law, public

policy or contracting documents of the County of Northampton this act shall prevail.

## **§2. Responsible Contractor Requirements**

(a) This ordinance shall apply to public works projects undertaken by Northampton County for the construction, demolition, alteration, renovation, modernization, service or maintenance of buildings, structures or facilities, for which the value of the project is valued at or above \$100,000. All contractors and subcontractors that perform on such projects, regardless of the value of individual contracts or subcontracts, shall satisfy the requirements of this ordinance in all respects.

## **§3. Contractor Responsibility Certifications**

(a) As a condition of performing work on a public works contract subject to this ordinance, a general contractor, construction manager or other lead or prime contractor seeking award of a contract shall submit a Contractor Responsibility Certification.

(b) The Contractor Responsibility Certification shall be completed on a form provided by the County and shall reference the project for which a bid is being submitted by name and contract or project number.

(c) In the Contractor Responsibility Certification the construction manager, general contractor or other lead or prime contractor shall confirm the following facts regarding its past performance and work history and its current qualifications and performance capabilities:

(1) The firm and its employees have all valid, effective licenses, registrations or certificates required by federal, state, county, or local law, including, but not limited to, licenses, registrations or certificates required to: (a) do business in the designated locale; and (b) perform the contract work it seeks to perform. These shall include, but not limited to, licenses, registrations or certificates for any type of construction or maintenance trade work or specialty work which the firm proposes to self-perform.

(2) The firm meets the bonding requirements for the contract, as required by applicable law or contract specifications and any insurance requirements, as required by applicable law or contract specifications, including general liability insurance, workers compensation insurance and unemployment insurance.

(3) The firm has not been debarred or suspended by any federal, state or local government agency or authority in the past three years.

(4) The firm has not defaulted on any project in the past three years.

(5) The firm has not had any type of business, contracting or trade license, registration, or other certification revoked or suspended in the past three years.

(6) The firm and its Principals/owners have not been convicted of any crime relating to the contracting business in the past ten years.

(7) The firm has not within the past three years been found in violation of any law applicable to its contracting business, including, but not limited to, licenses laws, tax laws, prompt payment laws, wage and hour laws, prevailing wage laws, environmental laws or others, where the result of such violation was the payment of a fine, back pay damages or any other type of penalty in the amount of \$1,000 or more.

(8) The firm will pay all craft employees that it employs on the project the current wage rates and fringe benefits as required under applicable federal, state or local wage laws.

(9) All craft labor that will be employed by the firm for the project have completed at least the OSHA 10 hour training course for safety established by the U.S. Department of Labor, Occupational Safety & Health Administration.

(10) The firm will employ craft employees in all classifications and individual trades required to successfully perform the work related to this project.

(11) The firm participates in a Class A Apprenticeship Program for the past three years, at a minimum, for each separate trade or classification in which it employs craft employees and

shall continue to participate in such program or programs for the duration of the project.

This apprenticeship requirement assures that workers in each trade or craft employed are graduates of an apprenticeship and training program in each trade or craft in which their services are utilized, which has been in continuous existence for no fewer than five (5) years prior to the commencement of the subject project. This apprenticeship requirement must be continuously registered with a State or Federal Government Agency for no fewer than five (5) years prior to the commencement of the subject project or otherwise deemed qualified by appropriate training such as military service in that trade or craft.

(A) For purposes of this section, a Class A Apprenticeship Program is an apprenticeship program that is currently registered with and approved by the U.S. Department of Labor or a state apprenticeship agency and has graduated apprentices to journey person status for at least three of the past five years. This may be an apprenticeship program that is subject to the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001 *et seq.* ("ERISA"), or a non-ERISA program.

(B) To demonstrate compliance with this section, the firm shall provide, with this certification, a list of all trades or classifications of craft employees it will employ on the project and documentation verifying it participates in a Class A Apprenticeship Program or an equivalent training program for each trade or classification listed.

(12) The firm has all other technical qualifications and resources, including equipment, personnel and financial resources, to perform the referenced contract, or will obtain same through the use of qualified, responsible subcontractors.

(13) The firm will maintain all qualifications, resources and capabilities referenced in this certification throughout the duration of the project.

(14) The firm shall notify the County within seven days of any material changes to all matters attested to in this certification.

(15) The firm understands that the Contractor Responsibility Certification required by this section shall be executed by a person who has sufficient knowledge to address all matters in the certification and shall include an attestation

stating, under the penalty of perjury, that the information submitted is true, complete and accurate.

(d) Execution of the Contractor Responsibility Certification required by this ordinance shall not establish a presumption of contractor responsibility and the County may require any additional information it deems necessary to evaluate a firm's status as a responsible contractor, including technical qualifications, financial capacity or other resources and performance capabilities. The County may require that such information be included in a separate Statement of Qualifications and Experience or as an attachment to the Contractor Responsibility Certification.

(e) The submitting firm shall stipulate in the Contractor Responsibility Certification that, if it receives a Notice of Intent to Award Contract, it will provide a Subcontractor List and required subcontractor information as specified in Section 5 of this ordinance.

(f) If the submitting firm has ever operated under another name or is controlled by another company or business entity or in the past five years controlled or was controlled by another company or business entity, whether as a parent company, subsidiary or in any other business relation, it shall attach a separate statement to its Contractor Responsibility Certification that explains in detail the nature of any such relationship. Additional information may be required from such an entity if the relationship in question could potentially impact contract performance.

(g) If a firm fails to provide a Contractor Responsibility Certification required by this section, it shall be disqualified from bidding. No action of any nature shall lie against the County because of its refusal to accept a bid for failing to provide information required by this section.

#### **§4. Notice of Intent to Award Contract**

(a) After it has received bids for a project, the County shall issue a Notice of Intent to Award Contract to the firm offering the lowest responsible bid.

(b) Such Notice shall be issued immediately or as soon as practicable after bids are opened and Notice of Intent to Award Contract. The Notice shall stipulate that the contract award is

conditioned on the issuance of a written Contractor Responsibility Determination, as required by Section 5 and any other conditions deemed appropriate by the County.

**§5. Subcontractor Lists, Subcontractor Responsibility Certifications**

(a) A prospective awardee shall submit to the County a Subcontractor List containing the names of any subcontractors that will be used for the referenced project, their addresses and a description of the work each listed subcontractor will perform on the project.

(b) At the time a perspective awardee submits the Subcontractor List it shall also submit Subcontractor Responsibility Certifications for all listed subcontractors to the County. Subcontractor Responsibility Certifications shall be executed by the respective subcontractors on forms prepared by the County and shall contain the same information and representations required in Contractor Responsibility Certifications, including verification of apprenticeship qualifications as required by Section 3(c)(11), for each trade or classification of craft workers it will employ on the project.

(c) Subcontractor Responsibility Certifications shall be executed by person having sufficient knowledge to address all matters in the certification and shall include an attestation stating, under the penalty of perjury, that all information submitted is true, complete and accurate.

**§6. Contractor Responsibility Review and Determination**

(a) After a Notice of Intent to Award Contract has been issued, the County shall undertake a review process to determine whether the prospective awardee is a qualified, responsible contractor in accordance with the requirements of this ordinance and other applicable laws and regulations and has the resources and capabilities to successfully perform the contract. The time of the review process shall be as determined necessary by the County.

(b) As part of this review process, the County shall ensure that the Contractor Responsibility Certification, the Subcontractor List and the Subcontractor Responsibility

Certifications, as required by this ordinance, have been submitted and properly executed.

(c) The County may conduct any additional inquiries to verify that the prospective awardee and its subcontractors have the technical qualifications and performance capabilities necessary to successfully perform the contract and that the firms have a sufficient record of law compliance and business integrity to justify the award of a public contract. In conducting such inquiries, the County may seek relevant information from the firm, its prior clients or customers, its subcontractors or any other relevant source.

(d) If at the conclusion of the review process the County determines that all responsibility certifications have been properly completed and executed and if it concludes that the qualifications, background and responsibility of the prospective awardee and the firms on its Subcontractor List are satisfactory, it may issue a formal written Contractor Responsibility Determination verifying that the prospective awardee is a qualified, responsible contractor. In the event a firm is determined to be non-responsible, the County shall proceed to conduct a responsibility review of the next lowest, responsive bidder or, if necessary, rebid the project.

(e) A Contractor Responsibility Determination may be issued after the conclusion of the review process under Section 5. A Responsibility Determination may be revoked or revised in any manner at any time if the County obtains relevant information warranting any such revocation or revisions.

#### **§7. Subcontractor Responsibility Review Requirements**

(a) A construction manager, general contractor or other lead or prime contractor shall not be permitted to use a subcontractor on any work performed for the County unless it has identified the subcontractor on its Subcontractor List and provided a Subcontractor Responsibility Certification in accordance with the requirements of Section 5.

(b) A subcontractor listed on a firm's Subcontractor List shall not be substituted unless written authorization is obtained from County and a Subcontractor Responsibility Certification is provided for the substitute subcontractor.



(c) In the event that the County determines that a prospective subcontractor listed by the apparent low bidder does not meet the responsibility standards of this Section, it may, after informing the prospective awardee, exercise one of the following options:

(1) permit the awardee to substitute a qualified, responsible, subcontractor in accordance with the requirements of this section;

(2) require the awardee to self-perform the work in question if the firm has the required experience, licenses and other qualifications to perform the work in question; or

(3) disqualify the prospective awardee.

(d) In the event that a subcontractor is disqualified under this ordinance, the general contractor, construction manager or other lead or prime contractor shall not be permitted to make any type of contractual claim against the County the basis of a subcontractor disqualification.

#### **§8. False or Misleading Responsibility Certifications**

(a) If the County determines that a Contractor or Subcontractor Responsibility Certification contains false or misleading material information that was provided knowingly or with reckless disregard for the truth or omits material information knowingly or with reckless disregard of the truth, the firm for which the certification was submitted shall be prohibited from performing work for the County for a period of three years and shall be subject to any other penalties and sanctions, including contract termination, available to the County under law. A contract terminated under these circumstances shall further entitle the County to withhold payment of any monies due to the firm as damages.

#### **§9. Execution of Final Contract**

(a) A contract subject to this ordinance shall not be executed until all requirements of this ordinance have been fulfilled and until Contractor and Subcontractor Responsibility Certifications have been issued by the County under Section 6(d). Upon completion of all requirements under this ordinance,

the County may execute a final contract based upon the Notice of Intent.

(b) Prior to the execution of a final contract under this Section, the County shall publicly post the Notice of Intent to Award, Contractor and Subcontractor Responsibility Certifications, Subcontractor Lists and Contractor Responsibility Determination on the County website for public inspection for a period of five (5) calendar days after the issuance of the Contractor Responsibility Determination.

## **SECTION 2**

Any and all other ordinances or parts of ordinances in violation or in conflict with the terms, conditions and provisions of this ordinance are hereby repealed to the extent of such irreconcilable conflict.

## **SECTION 3**

The terms, conditions and provisions of this ordinance are hereby declared to be severable, and, should any portion, part or provision of this ordinance be found by a court of competent jurisdiction to be invalid, enforceable or unconstitutional, County Council hereby declares its intent that the ordinance shall have been enacted without regard to the invalid, enforceable or unconstitutional portion, part or provision of this ordinance.

## **SECTION 4**

This ordinance shall become effective thirty (30) days after enactment.

This ordinance was advertised on the 23<sup>rd</sup> day of September 2018, and was adopted by the Northampton County Council on the 4<sup>th</sup> day of October 2018.

ATTEST:

/s/Linda M. Zembo

Linda M. Zembo  
Clerk to Council

/s/Kenneth M. Kraft

Kenneth M. Kraft  
County Council President

/s/Lamont G. McClure  
Lamont G. McClure  
County Executive

Ordinance No. 648-2018 was initially enacted October 5, 2018. It was amended by the enactment of Ordinance No. 691-2020 on September 4, 2020.

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