

RADNOR TOWNSHIP, DELAWARE COUNTY, PA
ORDINANCE NO. 2022-08

**AN ORDINANCE OF RADNOR TOWNSHIP, DELAWARE COUNTY,
PENNSYLVANIA, AMENDING PART II, GENERAL LEGISLATION,
CHAPTER 145, CONTRACTORS OF THE CODE OF THE TOWNSHIP
OF RADNOR, BY ADOPTING RESPONSIBLE CONTRACTOR
REQUIREMENTS FOR TOWNSHIP CONTRACTS**

WHEREAS, Radnor Township ("**Township**") 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.

WHEREAS, to effectuate the purpose of selecting responsible contractors for public contracts and to protect the **Township's** investments in such contracts, prospective contractors and sub-contractors, 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.

WHEREAS, 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. The **Township** also recognizes that it is beneficial to the local community to ensure that firms receiving public contracts provide adequate wages and benefits to their employees and utilize fair business, employment and training practices that have a positive impact on local communities affected by such contracts.

WHEREAS, the **Township** shall require compliance with the provisions of this ordinance by business entities seeking to provide services to the **Township** 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 **Township**, this act shall prevail.

NOW, THEREFORE, the Board of Commissioners does hereby enact the following ordinance amending Part II General Legislation, Chapter 145 Contractors as follows.

ARTICLE I Part II, Chapter 145 Contractors of the Code of the Township of Radnor is hereby amended, adding new subsections as follows:

Section 145-8 Responsible Contractor Requirements

- A. This ordinance shall apply to any public works projects undertaken by the **Township** for construction, demolition, alteration, renovation, modernization service or maintenance of any buildings, structures or facilities valued at \$50,000 or more. All contractors and subcontractors of any tier that perform work on such projects, regardless of value of individual contract or subcontract packages shall meet the requirements of this ordinance.
- B. All firms engaged in contracts covered by this ordinance shall be qualified, responsible contractors or subcontractors that have sufficient capabilities in all respects to successfully perform contracts on which they are engaged, including the necessary experience, equipment, technical skills and qualifications and organizational, financial and personnel resources. Firms bidding on public contracts shall also be required to have a satisfactory past performance record and a satisfactory record of law compliance, integrity and business ethics.

Section 145-9 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 at the time it submits its bid for a contract.
- B. The Contractor Responsibility Certification shall be completed on a form provided by the Township 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 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, licensing 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 the OSHA 10-hour training course for safety established by the U.S. Department of Labor, Occupational Safety & Health Administration. If the firm is a prime contractor, it shall also ensure that at least one person on the project has completed the OSHA 30-hour construction training course established by the U.S. Department of Labor.
- (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 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.
 - (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 journeyman status for at least three of the past five years. This may be an apprenticeship program subject to the Employee Retirement Income Security Act of 1974 (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 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 Township 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.
 - (16) The construction manager, general contractor or other lead or prime contractor responsible for the project shall ensure that at least seventy (70) percent of the craft labor workers employed on the project shall be comprised of either journeyman workers who have successfully completed a Class A Apprenticeship Program as defined in subsection (11) of this section or apprentices registered in such program, in the same trade or craft for which the workers are employed on the project.
- D. Execution of the Contractor Responsibility Certification required by this ordinance shall not establish a presumption of contractor responsibility and the **Township** 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 Township 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 controls, 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 in any bid submission to the Township, such failure shall constitute grounds to reject such bid as non-compliant with this ordinance and shall disqualify such firm from bidding. No

action of any nature shall lie against the **Township** because of its refusal to accept or award a bid for failing to provide information required by this section.

Section 145-10 Notice of Intent to Award Contract.

- A. After it has received bids for a project, the **Township** shall issue a *Notice of Intent to Award Contract* to the firm that has submitted the lowest responsive and responsible bid.
- B. Such Notice shall be issued immediately or as soon as practicable after bids are submitted and shall stipulate that the contract award will be conditioned on the issuance of a written Contractor Responsibility Determination, as required by section 6 of this ordinance and any other conditions determined appropriate by the **Township**.

Section 145-11 Subcontractor Lists, Subcontractor Responsibility Certifications.

- A. Within fourteen (14) days from the date of Notice of Intent to Award Contract, a prospective awardee shall submit to the Township a Subcontractor List containing the names of 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 prospective awardee submits the Subcontractor List it shall also submit Subcontractor Responsibility Certifications for all listed subcontractors to the **Township**. Subcontractor Responsibility Certifications shall be executed by the respective subcontractors on forms prepared by the **Township** 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. The prospective awardee shall not be permitted to use a subcontractor on any work performed for the **Township** unless it has identified the subcontractor on its Subcontractor List and provided a Subcontractor Responsibility Certification in accordance with this ordinance. All subcontractors shall be identified on the Subcontractor List submitted by any bidder and Subcontractor Responsibility Certifications shall be submitted with supporting documentation by a prospective awardee.
- D. A prospective awardee shall determine whether any firm on its Subcontractor List, at any tier, is organized as a sole proprietorship and operated by a single person. For any such entity, the prospective awardee shall ensure that the sole proprietorship subcontractor is a legitimate business entity by requiring the subcontractor to supplement its Subcontractor Certification with its Employer Identification Number and copies of all licenses, or registrations it is required to do business in the state in which it is located.
- E. A subcontractor listed on a firm's Subcontractor List shall not be substituted unless written authorization is obtained from the **Township** and a Subcontractor Responsibility Certification is provided for the substitute subcontractor.

- F. Subcontractor Responsibility Certifications shall be executed by persons 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.
- G. In the event that the **Township** determines that a subcontractor fails to meet the requirements of this ordinance or is otherwise deemed to be non-responsible, the Township may exercise one of the following options:
 - (1) Permit the awardee to substitute a qualified, responsible subcontractor in accordance with the requirements of this section upon submission of a completed Subcontractor Certification for the substitute and approval by the **Township**.
 - (2) Require the awardee to self-perform the work in question if the firm has the required experience, licenses and qualifications to perform the work; or
 - (3) Disqualify the prospective awardee for non-compliance with this ordinance.

Section 145-12 Contractor Responsibility Review and Determination.

- A. After a Notice of Intent to Award Contract has been issued, the **Township** 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.
- B. As part of this review process, the **Township** shall ensure that the Contractor Responsibility Certification, the Subcontractor List and the Subcontractor Responsibility Certifications, as required by this act, have been submitted and properly executed.
- C. The Township 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 **Township** 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 its internal review, the **Township** 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 shall issue a 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 **Township** shall advise the firm of its finding in writing and proceed to conduct a responsibility review of the next lowest, responsive bidder or, if necessary, re-bid the project.
- E. The Contractor Responsibility Determination shall be issued at least 30 days after the date of the Notice of Intent to Award Contract. This Responsibility Determination may be

revoked or revised in any manner at any time if the **Township** obtains relevant information warranting any such revocation or revisions.

Section 145-13 Execution of Final Contract; Public Review

- A. The Contractor Responsibility Certification for a firm identified in a Notice of Intent to Award Contract, Subcontractor Lists and Subcontractor Responsibility Certifications shall be made available to the public for inspection for ten (10) calendar days prior to executing a final contract covering the project.
- B. A contract subject to this ordinance shall not be executed until all requirements of this ordinance have been fulfilled and until a Contractor Responsibility Determination has been issued by the **Township**.
- C. If the **Township** 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 Township for a period of three years and shall be subject to any other penalties and sanctions, including contract termination, available to the **Township** under law. A contract terminated under these circumstances shall further entitle the **Township** to withhold payment of any monies due to the firm as damages.

ARTICLE II Severability, Effective Date.

- A. If any provision of this ordinance shall be held to be invalid or unenforceable by a court of competent jurisdiction, any such holding shall not invalidate any other provisions of this ordinance and all remaining provisions shall remain in full force and effect.
- B. All ordinances or parts of ordinances inconsistent with this ordinance are hereby repealed to the extent of the inconsistency.
- C. This ordinance shall become effective in accordance with the Radnor Township Home Rule Charter.

ENACTED and ORDAINED this 18th of July, 2022.

RADNOR TOWNSHIP

By:



Name: Moira Mulroney

Title: President

ATTEST:



William White, Manager/Secretary

