

COUNTY OF BUCKS
Commonwealth of Pennsylvania

RESPONSIBLE CONTRACTOR ORDINANCE
AMENDMENTS

ORDINANCE NO. 167

To be Voted on March 16, 2022

AN ORDINANCE OF THE COUNTY OF BUCKS, COMMONWEALTH OF
PENNSYLVANIA, AMENDING ORDINANCE NO. 162 (“RESPONSIBLE
CONTRACTOR ORDINANCE”)

WHEREAS, Bucks County ("County") enacted Ordinance No. 162, the Responsible Contractor Ordinance, on March 4, 2020, which has been successful in protecting the interests of the County and the public with respect to public works projects; and

WHEREAS, the Bucks County Commissioners seek to build on the success of Ordinance 162 in order to increase the percentage of skilled craft personnel who have the necessary training and skills needed for public works projects and to provide additional protections for the benefit of the County and its residents; and

WHEREAS, the provisions of Ordinance No. 162 are herein reaffirmed and ratified subject only to the amendments set forth herein. Except as amended herein, all provisions of Ordinance No. 162 shall be and remain in full force and effect and are incorporated as part of this ordinance.

NOW, THEREFORE, BE IT ORDAINED AND ENACTED that the County hereby **AMENDS** Ordinance No. 162 by deleting §2 and §3 in their entirety and replacing them as set forth below:

§2 Responsible Contractor Requirements

(a) This ordinance shall apply to all public works projects undertaken by the County for construction, demolition, alteration, renovation, service or maintenance of buildings, structures, or facilities valued at or above \$250,000.00 and shall apply to all contractors and subcontractors of any tier that perform work on such projects.

(b) All firms engaged in public works contracts subject to this ordinance, including general contractors, construction managers, other lead or prime contractors, and subcontractors at any level, shall be qualified, responsible contracting firms 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 or otherwise

participating in public works contracts shall also be required to have a satisfactory past performance record and a satisfactory record of law compliance, integrity, and business ethics.

§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, as specified herein. Subcontractors used on the contract are likewise required to provide similar Subcontractor Responsibility Certifications as provided by §7 of this ordinance.

(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, certificates, or other credentials 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, as well as applicable insurance requirements for the contract 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 its contracting business in the past ten years.

(7) Within the past three years, the firm has not 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 \$5,000 or more.

(8) The firm will employ a sufficient number of craft labor personnel required to successfully perform any project work it self-performs or shall use qualified subcontractors to meet this requirement and shall assign workers to perform only work in their respective craft or trade for which they have sufficient skills and training or shall use qualified subcontractors to meet this requirement.

(9) The firm will pay all craft employees on the project, at a minimum, the applicable wage and fringe benefit rates, as established for the classification in which the worker is employed, in accordance with 43 PA. CONS. STAT. § 165-1 *et seq.*

(10) The firm will ensure that all craft labor it employs on the project will have completed, prior to working on the project, the OSHA 10-hour training course for safety established by the U.S. Department of Labor. 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.

(11) The firm participates in a Class A Apprenticeship Training Program, as defined below, for each separate trade or classification in which it employs craft employees.

A. For purposes of this ordinance, a Class A Apprenticeship Program is an apprenticeship program 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 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 ordinance, 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.

C. The requirements of §§3(c)(11)-(12) of this ordinance help ensure that the bulk of the craft labor workforce employed on the project will have sufficient skills and training to correctly perform work assigned to them.

(12) The construction manager, general contractor or other lead or prime contractor responsible for the project shall ensure that at least 70 percent of the craft

labor workers employed on the project shall be comprised of either journeyperson workers who have successfully completed a Class A Apprenticeship Program as defined in §3(c)11 of this ordinance or apprentices registered in such programs. The apprenticeship participation must be in the same trade or craft for which the workers are employed on the project.

(13) The firm shall assign craft labor personnel only work in the craft or trade in which they are employed.

(14) The firm has all other technical qualifications and resources, including equipment, personnel, and financial resources, to successfully perform the referenced contract and shall maintain such capabilities throughout the duration of the project, or will obtain same through the use of qualified, responsible subcontractors or vendors.

(15) The firm shall notify the County within seven days of any material changes in its operation that related to any matter attested to in this certification.

(16) The firm understands that the Contractor Responsibility Certification required by this ordinance 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 information regarding the firm's 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 §6 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 an appendix 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 ordinance, 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 this reason.

NOW, THEREFORE, BE IT ORDAINED AND ENACTED that the County further **AMENDS** Ordinance No. 162 by deleting §§6-11 in their entirety and replacing them as set forth below:

§6. 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 that has submitted the lowest responsible bid.
- (b) Such Notice shall be issued immediately or as soon as practicable after bids are opened and shall stipulate that the contract award is conditioned on the issuance of a written Contractor Responsibility Determination for the firm, as required by §8 of this ordinance, compliance with Subcontractor Certifications required by §7 of the ordinance, and any other qualification standards required by the County.

§7. Subcontractor Responsibility Requirements

- (a) Within seven (7) days of receiving a Notice of Intent to Award Contract, the prospective awardee shall submit to the County a Subcontractor List, which provides the name and address of the subcontractors it will use on the project, the scope of the work assigned to each subcontractor, and Subcontractor Responsibility Certifications as required by this ordinance.
- (b) The prospective awardee 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 §3.
- (c) At the time a prospective awardee submits the Subcontractor List it shall also submit Subcontractor Responsibility Certifications and applicable supporting information 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, representations, and supporting information required in Contractor Responsibility Certifications, including verification of apprenticeship qualifications as required by §3(c)(11), for each trade or classification of craft workers it will employ on the project.
- (d) A prospective awardee shall determine whether any firm on its Subcontractor List is organized as a sole proprietorship owned and operated by a single person. This shall apply to subcontractors at any tier. For any such entity, the prospective awardee shall ensure that the sole proprietorship subcontractor is a legitimate business entity and not a misclassified employee by requiring the subcontractor to supplement its Subcontractor Certification with its Employer Identification Number and copies of any license, certificate, or registration it is required to maintain in order 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 County and a Subcontractor Responsibility Certification is provided for the substitute subcontractor.

(f) In the event that the County determines that a subcontractor fails to meet the requirements of this ordinance or is otherwise determined to be non-responsible, 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 ordinance, upon submission of a completed Subcontractor Certification for the substitute and approval of the substitute by the County.

(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.

(g) In the event 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 claim against the County based on a subcontractor disqualification.

§8. Contractor Responsibility Review and Determination

(a) After the County has issued a Notice of Intent to Award Contract to the lowest responsive bidder, it shall undertake a contractor responsibility review process to determine whether the firm is a qualified, responsible firm in accordance with the requirements of this ordinance and other applicable laws and regulations. The time frame for conducting this review process shall be as determined by the County.

(b) As part of the review process, the County shall ensure that the Contractor Responsibility Certification and Subcontractor Responsibility Certifications and applicable supporting information comply with the requirements of this ordinance.

(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, integrity, and business ethics 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) After the County determines that all responsibility certifications have been properly executed and has verified that all other relevant information submitted in response to the request pursuant to the review process indicate that the prospective awardee and its

subcontractors are qualified, responsible firms, it shall issue a written Contractor Responsibility Determination for the prospective awardee.

(e) In the event a firm is determined to be non-responsible, the County shall notify the firm and proceed to conduct a responsibility review of the next lowest, responsive bidder or, if necessary, rebid the project. A Responsibility Determination may be revoked at any time if the County obtains relevant information warranting any such revocation.

§9. False and Misleading Responsibility Certifications

If the County determines that a Contractor Responsibility Certification, Subcontractor List, 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 disqualified from the project and shall be prohibited from performing work for the County for a period of three years. The County may withhold payment of any monies due to the firm as damages and impose other applicable penalties and sanctions, including contract termination, as permitted by law or contract.

§10. 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 Responsibility Determination has been issued by the County under §8(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 ordinance, the County shall publicly post the Notice of Intent to Award, Contractor and Subcontractor Responsibility Certifications, Subcontractor Lists, related supporting documentation, and the 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.

§11. Effective date

Ordinance 167 (“Responsible Contractor Ordinance Amendments”) shall become effective thirty (30) days after enactment.

ORDAINED AND ENACTED this ____ day of _____, 2022.

BOARD OF COMMISSIONERS,
BUCKS COUNTY, PENNSYLVANIA

Robert J. Harvie, Jr. (Chair)

Diane Ellis-Marseglia, LCSW (Vice-Chair)

Gene DiGirolamo (Secretary)

Attest:

Gail Humphrey, Chief Clerk