

**COUNTY OF CENTRE
COMMONWEALTH OF PENNSYLVANIA**

ORDINANCE No. ____-2023

AN ORDINANCE OF THE COUNTY OF CENTRE, COMMONWEALTH OF PENNSYLVANIA, PROVIDING FOR THE ADOPTION OF CERTAIN PROCEDURES RELATED TO THE SOLICITATION AND AWARD OF CERTAIN PUBLIC CONSTRUCTION CONTRACTS; PROVIDING FOR CERTIFICATION REQUIREMENTS FOR PUBLIC CONTRACTORS AND SUBCONTRACTORS TO PUBLIC CONTRACTS; PROVIDING FOR PUBLIC CONTRACT REVIEW PROCEDURES; PROVIDING FOR ASSURANCE ON THE USE OF PROPERLY TRAINED CONSTRUCTION PERSONNEL; REPEALING INCONSISTENT ORDINANCES OR PARTS OF ORDINANCES; CONTAINING A SAVINGS CLAUSE AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, pursuant to County Code, 16 P.S. § 1802, most public works contracts must be competitively bid and contracts be awarded only to the lowest “*responsible*” and responsive bidder submitting a bid in conformity with the specifications approved by the Board of Commissioners; and

WHEREAS, notwithstanding the importance of the “*responsible*” bidder requirement, there is very limited guidance for defining the term “*responsible*” in relevant statutes, regulations or case law, and, therefore, prudent procurement and contracting policy dictates that this term should be more specifically defined; and in doing so, available guidance regarding the general meaning of the “*responsible*” contractor term should be followed, which typically relates to the technical qualifications and other capabilities relating to a contractor’s ability to successful delivery public works projects; and

WHEREAS, in undertaking its infrastructure and other public works projects, Centre County seeks to utilize reliable and efficient procurement procedures that will help ensure that its projects are delivered with reasonable certainty, in a safe, timely manner, and in accordance

with contract specifications and applicable industry codes at the lowest overall cost and best value; and

WHEREAS, securing successful delivery of projects in the construction industry is particularly difficult due to the unique, complex, unpredictable and inherently dangerous nature of the industry, wherein errors in project planning or execution can result in serious health and safety risks to project workers and/or the general public, significant and avoidable cost overruns, flawed or inferior projects, and disruptions in performance schedules that delay the availability and use of critical government facilities; MAUREEN CONWAY & ALLISON GERBER, ASPEN INST., WORKFORCE STRATEGIES INITIATIVE, CONSTRUCTION PRE-APPRENTICESHIP PROGRAMS: RESULTS FROM A NATIONAL SURVEY 6-7 (2009)(discussing complicating factors in successful delivery of construction projects and the risks of using poorly trained workers); and

WHEREAS, to protect its financial and proprietary interests in these projects, and to offset performance risks inherent to public works contracting, Centre County desires to use efficient procurement procedures that adequately protect and promote these interests, including clearly defined, pre-established evaluation criteria to address the unique challenges of capital construction and to result in the selection of qualified, reputable contractors and subcontractors that are committed to Centre County's goals of safe, timely, cost-effective project delivery; and

WHEREAS, to establish efficient procurement procedures, Centre County specifically seeks to require that its public works contracts are to be performed by qualified "responsible" contractors and subcontractors that meet essential performance criteria, including: (a) satisfactory records of past performance, including compliance with applicable laws and industry regulations; and (b) adequate present performance capabilities, including contractor and subcontractor competency and availability of skilled craft personnel; and

WHEREAS, in seeking to ensure the adequate development of trained, skilled personnel for the construction industry, as well as other industries, the United States Congress passed the Fitzgerald Act, Pub. L. No. 75-308, 50 Stat. 664, which created a system in which workers could be properly trained in construction skills and safety procedures through organized, formally registered apprenticeship training programs that meet established quality, safety and performance standards, and such programs are approved and monitored by the U.S. Department of Labor and state labor agencies, including the Pennsylvania State Apprenticeship Council; and

WHEREAS, Centre County wishes to establish procurement standards for public works construction to address these findings and considerations, limit project delivery risks and protect its financial and proprietary interests, and better ensure efficient procurement and successful delivery of these projects.

NOW THEREFORE, IT IS HEREBY ORDAINED BY THE BOARD OF COMMISSIONERS OF CENTRE COUNTY, PENNSYLVANIA THAT:

§1. Purpose

The County of Centre (hereinafter “Centre County”) recognizes that there is a need to ensure that all construction work on public buildings is performed by responsible, qualified firms that maintain the capacity, expertise, personnel and other qualifications and resources necessary to successfully perform the contracts in a timely, reliable and cost-effective manner.

To effectuate the purpose of selecting responsible contractors for contracts for construction work on public buildings and to protect Centre County’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, expertise, 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 contracts for construction work on public buildings, 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 and availability. It is important that skilled workers performing construction projects for Centre County have proper safety training. Centre County also recognizes that it is beneficial to the local community to ensure that firms receiving contracts for construction work on public buildings 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.

Therefore, Centre County shall require compliance with the provisions of this Ordinance by contractors seeking to enter contracts for construction work on public buildings as specified herein. The requirements of this Ordinance are intended to supplement, not replace, existing contractor qualifications and performance standards or criteria currently required by law, public policy or contracting documents.

§2. Responsible Contractor Requirements.

- (a) This Ordinance shall apply to public works projects undertaken directly by Centre County (but not municipal or other authorities) for construction, demolition, alteration, renovation, modernization, service or maintenance of buildings, structures or facilities valued at \$250,000.00 or more in total that are subject to competitive bidding under the County Code. 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 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.
- (c) 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 the Pennsylvania Prevailing Wage Act, 43 P.S. § 165-1 *et. seq.* These wages shall also be paid to employees performing any custom fabrication work for the project. For purposes of this subsection, custom fabrication shall mean the fabrication, assembly modification or other production of non-standard goods, or materials, including components, fixtures, or parts thereof, that are fabricated assembled or modified offsite, but produced specifically for a project covered by this Ordinance. This requirement shall include, but not be limited to custom fabrication for electrical, plumbing, mechanical, refrigeration, heating, cooling, ventilation, sheet metal or other duct systems, mechanical insulation, ornamental iron work or boiler systems. Fabrication shall also include the fabrication, assembly or other production of components or structures prefabricated to specifications for a particular project covered by this Ordinance.

§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.
- (b) The Contractor Responsibility Certification shall be completed on a form provided by Centre County and 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 licenses, registrations, certificates or other credentials required by federal and state law and the laws of Centre County with respect to the contract work it seeks to self-perform.
- (2) The firm meets the bonding requirements for the contract required by law or contract specifications, as well as applicable insurance requirements for the contract, including general liability, workers compensation 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 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, 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.
- (9) The firm shall 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 and at least one person with OSHA 30 training.
- (10) 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 workforce employed on the project workforce shall be comprised of either journey person, workers who have successfully completed an apprenticeship training program registered with and approved by the U.S. Department of Labor or a state apprenticeship agency or registered apprentices currently enrolled in such programs.

- A. The intent of these craft labor requirements is that the great majority of the craft labor personnel employed on the project have the requisite skills and qualifications to perform the project work as they will be participants in or graduates of bona fide apprenticeship training programs in each trade or craft in which their services are utilized.
 - B. For purposes of this subsection, apprenticeship training programs may include those which are subject to the Employee Retirement Income Security Act of 1974, 29 U.S.C. §1001 *et seq.* (“ERISA”), or non-ERISA programs.
 - C. 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 the names and addresses of all applicable apprenticeship programs relating to craft personnel utilized on the project.
- (11) The firm 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.
 - (12) The firm shall comply with the wage requirements set forth in section 2(c) of this Ordinance. The minimum wage for custom fabrication work shall be the same as the wage paid for project work in accordance with each applicable trade or classification.
 - (13) 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
 - (14) The firm will maintain all qualifications, resources and capabilities referenced in this certification throughout the duration of the project.
 - (15) The firm shall notify Centre County within seven days of any material changes in its operation that relate to any matter attested to in this certification.
 - (16) 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 Centre 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. Centre 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 (5) 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 section, it shall be disqualified from bidding. No action of any nature shall lie against Centre County because of its refusal to accept a bid for this reason.

§4. Notice of Intent to Award Contract.

- (a) After it has received bids for a project, Centre County shall issue a Notice of Intent to Award Contract to the firm that has submitted the lowest responsive 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 Section 6 of this Ordinance, compliance with Subcontractor Certifications required by Section 5 of this Ordinance, and any other qualification standards required by Centre County.

§5. Subcontractor Responsibility Requirements.

- (a) Within fourteen (14) days of receiving a Notice of Intent to Award Contract, the prospective awardee shall submit a Subcontractor List, which provides the name and address of the subcontractors it will use on the project, the scope of work assigned to each subcontractor, and Subcontractor Responsibility Certifications as required by this section.
- (b) The prospective awardee shall not be permitted to use a subcontractor on any work performed for Centre County unless it has identified the subcontractor on its

Subcontractor List and provided a Subcontractor Responsibility Certification in accordance with the requirements of Section 4.

- (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 Centre County.
- (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 to do business in the state in which it is located.
- (e)** Subcontractor Responsibility Certifications shall be executed by the respective subcontractors on forms prepared by Centre County and contain the same information, representations and supporting information required in Contractor Responsibility Certifications, including verification of apprenticeship qualifications required by Section 3(c)(11) for each trade or classification of craft workers it will employ on the project.
- (f)** Subcontractor Responsibility Certifications shall be executed by a 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.
- (g)** A subcontractor listed on a firm's Subcontractor List shall not be substituted unless written authorization is obtained from Centre County and a Subcontractor Responsibility Certification is provided for the substitute subcontractor.
- (h)** In the event that Centre 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 section, upon submission of a completed Subcontractor Certification for the substitute and approval of the substitute by Centre 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.

- (i) 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 Centre County on the basis of a subcontractor disqualification.

§6. Contractor Responsibility Review and Determination.

- (a) After Centre 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. This review shall also include review of all subcontractors for the Contract and confirmation that those firms meet the required qualifications under this Ordinance. The time frame for conducting this review process shall be as determined by Centre County.
- (b) As part of the review process, Centre County shall ensure that the Contractor Responsibility Certification and Subcontractor Responsibility Certifications and applicable supporting information comply with the requirements of this Ordinance.
- (c) Centre 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, Centre County may seek relevant information from the firm, its prior clients or customers, its subcontractors or any other relevant source.
- (d) After Centre County determines that all responsibility certifications have been properly executed and has verified that all other relevant information requested for reviews indicates 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, Centre 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 Centre County obtains relevant information warranting any such revocations.

§ 7. 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 a Contractor Responsibility Determination has been issued by Centre County pursuant to Section 6.

§ 8. False, Incomplete or Misleading Responsibility Certifications.

If Centre County determines that a Contractor Certification, Subcontractor List or Subcontractor Responsibility Certification contains false or misleading 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 Centre County for a period of three (3) years. Centre 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.

§ 9. Emergencies

Should Centre County determine that emergency circumstances exist which render the requirements and procedures set forth in this Ordinance unduly burdensome, then in that event, and only in that event, Centre County may award a contract for a Centre County project without application of the terms of this Ordinance. Any such determination shall be made by vote of the Commissioners in a publicly advertised meeting.

§ 10. Repealer.

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.

§ 11. Severability.

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, unenforceable or unconstitutional, Centre County hereby declares its intent that the Ordinance shall have been enacted without regard to the invalid, unenforceable or unconstitutional portion, part or provision of this ordinance.

§ 12. Effective Date.

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

ENACTED AND ORDAINED, by the Board of Commissioners of Centre County, Pennsylvania, in lawful session duly assembled, on the ___ day of _____, 2023.

ATTEST:

**CENTRE COUNTY
BOARD OF COMMISSIONERS**

John Franek Jr.
Administrator

Mark Higgins, Chair

Amber Concepcion

{SEAL}

Steven Dershem

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