

ORDINANCE NO.

BILL NO. 16 - 2022

INTRODUCED BY COUNCIL

March 16, 2022

AN ORDINANCE

Amending Chapter 5, Administration of Government, Article 1, Administration Generally, § 5-21 Contracts, by adding certain qualification and performance standards contractors bidding on certain city projects must meet, in a new Section entitled: I. Requirements for Construction Contracts. The requirements provide that all contractors and subcontractors that perform work valued at over \$200,000 on a City of Allentown construction project shall meet certain certification requirements inclusive of issues related to bonding, void of any tax delinquencies or failures on past projects, no past wage or labor violations, OSHA training, a Class A Apprenticeship Program, subcontractor responsibilities, Lehigh Valley labor requirements; and the legislation also includes provisions related to waivers of such requirements.

Section One: That the following be added as Section I, Requirements for Construction Contracts, and read as follows:

I. REQUIREMENTS FOR CONSTRUCTION CONTRACTS

(1) Required Conditions

(a) Every construction contract shall adhere to the “Required Conditions for all Contracts” outlined in this section.

(2) Purpose

(a) The City of Allentown recognizes that there is a duty to ensure that all work on public construction 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.

(b) To effectuate the purpose of selecting responsible contractors for these public works contracts and to protect the City of Allentown’s investments in such contracts, prospective contractors, and subcontractors, should be required to meet pre-established, clearly defined, minimum qualification standards regarding past project performance in terms of competency, safety, law compliance, technical abilities, and adequacy of resources.

(c) Further, due to the critical impact that skilled craft labor has on the execution of public works projects, and the increasingly limited availability of such labor, it is necessary to require contractors and subcontractors to participate in proven apprenticeship training programs as a condition of bidding and to help ensure future workforce development.

(d) Therefore, the City of Allentown shall require compliance with the provisions of this section by business entities seeking to bid on construction projects for the City of Allentown as specified herein. The requirements of this section 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 this section conflicts with any law, public policy or contracting documents of the City of Allentown, the requirements of this section shall prevail.

(3) Definitions

(a) The term “construction project” as used in this section is defined as construction, reconstruction, demolition, alteration, or repair work other than maintenance, performed under contract with the City of Allentown and paid for in whole or in part out of the funds of the City.

(b) The term “maintenance” as used in this section is defined as the repair of existing facilities when the size, type or extent of such facilities is not thereby changed or increased.

(4) Responsible Contractor Requirements

(a) All contractors and subcontractors of any tier that perform work valued at over \$200,000 on a construction project shall meet the requirements in this section.

(b) All firms engaged in contracts covered by this section 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 compliance with applicable laws, integrity, and business ethics.

(5) Contractor Responsibility Certifications

(a) As a condition of performing work on a construction project subject to this section, a general contractor or other lead or prime contractor seeking award of a contract shall submit as a necessary part of their complete bid response a Contractor Responsibility Certification, a Subcontractor List, Subcontractor Responsibility Certifications and applicable supporting materials, including proof that the subcontractor participates in a Class A Apprenticeship Program and for any subcontractor that operates as a sole proprietorship applicable business records that verify any such firm is a legitimate business entity, not an employee improperly misclassified as a sub-contractor, as specified herein.

(b) The Contractor Responsibility Certification shall be completed on a form provided by the City of Allentown and shall reference the project for which a bid is being submitted by name and contract or project number. The administration is tasked with creating forms consistent with this requirement.

(c) In the Contractor Responsibility Certification, the 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 or certificates required by federal and state law and ordinances of the City of Allentown with respect to the contract 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 and workers compensation 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 related to the proposed project work content 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 construction contracting business in the past ten years.

[7] The firm does not currently owe any outstanding taxes, penalties, interest, or other financial obligation to the City of Allentown.

[8] 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, license laws, tax laws, prompt payment laws, wage and hour laws, prevailing wage laws, environmental laws, or other laws 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 \$5,000.00 or more.

[9] 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.

[[10] The firm will employ a sufficient number of craft personnel required to successfully perform any project work it self-performs and shall assign workers to perform only work for which they have sufficient skills, training and knowledge.

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

[12] The firm participates in a Class A Apprenticeship Training Program, as defined below, for each separate trade or classification in which it or its subcontractors employ craft employees. 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 and such apprenticeship and training program has been in continuous existence for no fewer than five (5) years prior to the commencement of the subject project.

(i) 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 (5) years. This may be an apprenticeship program that is subject to the Employees Retirement Income Security Act of 1974, 29 U.S.C. § 1001 et seq. ("ERISA"), or a non – ERISA program. In further judging, defining, and applying the terms used in this section, the definitions used in the Prevailing Wage Act and in the regulations promulgated pursuant thereto shall be considered and applied. P.S. §165-2 and 34 Pa Code §9.102.

(ii) 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.

[13] The firm has all other technical qualifications and resources, including equipment, personnel and financial resources, to successfully perform the referenced contract.

[14] The firm shall notify the City of Allentown within seven (7) days of any material change to any matter 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 section shall not on its own establish a presumption of contractor responsibility and the City of Allentown 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 City of Allentown 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) 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 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.

(f) If a firm fails to provide a Contractor Responsibility Certification or a Subcontractor List and required subcontractor information as specified herein: it shall be disqualified from bidding. No action of any nature shall lie against the City of Allentown because of its refusal to accept a bid for failing to provide information required by this section.

(6) Notice of the Award of a Contract

(a) After it has received bids for a project, the City of Allentown shall issue an Award of Contract pursuant to the City Code and subject to the conditions of this section.

(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 this Section and any other qualification standards required by the City of Allentown.

(7) Subcontractor Responsibility Requirements

(a) A prospective bidder shall not be permitted to use a subcontractor on any work performed for the City of Allentown unless it has identified the subcontractor on its Subcontractor List and provided a Subcontractor Responsibility Certification in accordance with the requirements of this Subsection.

(b) At the time a prospective bidder submits the Subcontractor List it shall also submit to the City of Allentown Subcontractor Responsibility Certifications for all listed subcontractors.

(c) 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.

(d) A prospective bidder shall determine whether any subcontractor on its Subcontractor List is organized as a sole proprietorship owned and operated by a single person. It shall ensure that any such subcontractor is a legitimate business entity and not a misclassified employee by requiring the subcontractor to supplement its Subcontractor Certification with applicable business records verifying that it is an actual business entity. These records may include but are not to be limited to articles of incorporation, certificates of incorporation, certificates of insurance, contractor licenses and other typical business records used in the course of the subcontractor's business.

(e) The prospective bidder 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.

(f) Subcontractor Responsibility Certifications shall be executed by the respective subcontractors on forms prepared by the City of Allentown and contain the same information, representations and supporting information required in Contractor Responsibility Certifications, including verification of apprenticeship qualifications required herein for each trade or classification of craft workers it will employ on the project.

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

(h) In the event that the City of Allentown determines that a Subcontractor fails to meet the requirements of this section 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 the City of Allentown.

[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 disqualify the prospective awardee.

(i) In the event a subcontractor is disqualified under this section, the general contractor or other lead or prime contractor shall not be permitted to make any type of claim against the City of Allentown on the basis of a subcontractor disqualification.

(8) Contractor Responsibility Review and Determination

(a) In reviewing bids for completeness and adherence to this section, the City of Allentown shall undertake a contractor responsibility review process to determine whether the firm is a qualified, responsible firm in accordance with the requirements of this section and other applicable laws and regulations.

(b) The City of Allentown may conduct any additional inquires 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 inquires, the City of Allentown may seek relevant information from the firm, its prior clients or customers, its subcontractors, or any other relevant source.

(c) If at the conclusion of the review process the City of Allentown 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 formal written Contractor Responsibility Determination verifying that the prospective bidder is a qualified, responsible contractor.

(d) In the event any bidder is determined to be non – responsive or non – responsible, the City may choose to award the contract to another responsive and responsible bidder or, if necessary, rebid the project.

(9) Execution of Final Contract

(a) A contract subject to this section shall not be executed until all requirements of this section have been fulfilled.

(b) Prior to the execution of a final contract under this Section, the City of Allentown shall publicly post the Notice of Award, Contractor and Subcontractor Responsibility Certifications, Subcontractor Lists and Contractor Responsibility Determinations on the City website for public inspection.

(10) Waiver of RCO Requirements

The requirements listed under this section may only be waived by resolution of the City Council under the following conditions:

(a) No bids have been received for the project by the close of the bidding period;

(b) Bid materials are provided to the City Council no later than fourteen (14) days prior to consideration of the waiver request;

(c) The waiver may only apply for the specific project;

(d) The resolution shall identify the basis for the waiver, which provisions are to be waived and whether the project shall be re-bid.

(11) False, Incomplete or Misleading Responsibility Certifications

If the City of Allentown determines that a Contractor 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 prohibited from performing work for the City for a period of three years and shall be subject to any other penalties and sanctions, including contract termination, available to the City under law. A contract terminated under these circumstances shall further entitle the City to withhold payment of any monies due to the firm as damages.

(12) Lehigh Valley Labor Requirements

(a.) Every contract over \$25,000 pertaining to construction projects shall specifically state that the developer/ contractor/subcontractor shall, in hiring, make every effort to employ persons residing within the Lehigh Valley, and in no event, shall less than eighty (80) percent of the labor force of the developer/contractor/ subcontractor on a project be residents of the Lehigh Valley. The Lehigh Valley is defined as Lehigh and Northampton Counties and all surrounding municipalities within ten (10) miles of the City of Allentown in the Commonwealth of Pennsylvania.

(b) The requirements in this section shall not apply to executives, engineers, technicians, supervisors, timekeepers, messengers, office workers, or employees above the classification of general foreman of the developer/ contractor/subcontractor, or to employees of a materials supplier.

(c) Every contract over \$25,000 pertaining to construction projects funded by the City of Allentown shall specifically state that the developer/contractors shall be obligated to make sure that subcontractors adhere to the requirements under this section.

(d) The local labor requirement can only be waived for a construction project or for a specific developer/construction manager/contractor/subcontractor by a resolution of the City Council.

[1] A resolution to waive a construction project from the requirement would specify in detail why federal and/or state funding of the project does not permit the local labor requirement or show that no bids were submitted for the project. Bid materials will be made available to the City Council if no bids were submitted.

[2] A resolution to waive a specific developer/construction manager/contractor/subcontractor from the requirement shall state that the following procedure has been complied with:

(i) Notice shall be given by the developer/construction manager/contractor/subcontractor to the City of Allentown upon the awarding of the contract that their specialty is unique.

(ii) The number of persons needed to perform the job shall be stated.

(iii) There must be a submission to justify that there are not a sufficient number of persons in the Lehigh Valley that have the knowledge and experience to perform the specialty.

(iv) The resolution shall specify the percentage of local labor that can be used.

(e) In the event that application of the requirements of this section would violate state or federal law or would render the City of Allentown ineligible for the receipt of funds from outside sources, the provisions of this section shall not control. Superseding state or federal law shall govern to the extent inconsistent herewith. Examples of such superseding law include:

(i) The Pennsylvania Prevailing Wage Act, 43 P.S. Section 165-1 et seq;

(ii) The Pennsylvania Public Works Employment Verification Act, 43 P.S. Section 167.1 et seq.; and

(iii) The Pennsylvania Antbid-Rigging Act, 62 Pa.C.S. Section 4501 et seq.

SECTION TWO: That all Ordinances inconsistent with the above provisions are repealed to the extent of their inconsistency.