

**COUNTY OF LEHIGH, PENNSYLVANIA
COMMISSIONERS BILL NO. 2020 - 07
SPONSORED BY COMMISSIONERS HARRINGTON, ELBICH, BRACE,
SMALLS & ZANELLI
REQUESTED DATE: MARCH 4, 2020
ORDINANCE 2020 - NO.**

**AN ORDINANCE OF LEHIGH COUNTY PROVIDING FOR THE ADOPTION
OF CERTAIN PROCEDURES RELATED TO THE SOLICITATION AND
AWARD OF PUBLIC WORKS CONTRACTS WITHIN LEHIGH COUNTY AND
AMENDING SECTION 801.3 OF THE ADMINISTRATIVE CODE**

WHEREAS, §310(a)-1 of the Lehigh County Home Rule Charter (“Charter”) permits the Board of Commissioners by ordinance to amend the Administrative Code; and

WHEREAS, §302(e) of the Charter permits the Board of Commissioners to prescribe in the Administrative Code procedures for the making of contracts and in §302(m) to make provisions for matters of County government to better the health, safety and welfare of the citizens of Lehigh County; and

WHEREAS, Lehigh County is duly empowered to enact certain laws needed to protect its proprietary and financial interests relating to major investments it makes in public works contracts, as well as those relating to the public health, safety, and welfare of its residents; and

WHEREAS, Lehigh County has particular interests regarding the challenges it faces in planning and executing public works construction projects, especially those relating to its ability to encourage the use of properly qualified contractors and subcontractors and interest in ensuring adequate numbers of craft personnel who have

industry recognized training in the respective skills and trades needed for future projects;
and

WHEREAS, Lehigh County must ensure the availability of well – paying jobs and investment in training of the skilled trades, especially considering labor needs and the cost of education.

**NOW, THEREFORE, IT IS HEREBY ENACTED AND ORDAINED BY
THE BOARD OF COMMISSIONERS OF THE COUNTY OF LEHIGH,
PENNSYLVANIA, THAT:**

1. The foregoing “WHEREAS” clauses are incorporated herein as if set forth in their entirety.

2. Section 801.3 shall be deleted and replaced with the following:

Section 801.3 – REQUIREMENTS FOR CONSTRUCTION CONTRACTS

(A) Every construction contract shall adhere to the “Required Conditions for all Contracts” outlined in Section 801.2.

(B) PURPOSE

(1) Lehigh County 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.

(2) To effectuate the purpose of selecting responsible contractors for these public works contracts and to protect the County of Lehigh’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.

(3) 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.

(4) Therefore, the County of Lehigh shall require compliance with the provisions of this ordinance by business entities seeking to provide construction services to the County of Lehigh 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 this ordinance conflicts with any law, public policy or contracting documents of the County of Lehigh, the requirements of this ordinance shall prevail.

(C) RESPONSIBLE CONTRACTOR REQUIREMENTS

(1) All contractors and subcontractors of any tier that perform work valued at over \$100,000.00 on any public facility or public works project, including construction, demolition, alteration, renovation, shall meet the requirements in this ordinance.

(2) 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 compliance with applicable laws, integrity and business ethics.

(D) CONTRACTOR RESPONSIBILITY CERTIFICATIONS

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

(2) 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. The administration is tasked with creating forms consistent with this requirement.

(3) 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:

(a) The firm and its employees have all licenses, registrations or certificates required by federal and state law and ordinances of the County of Lehigh with respect to the contract it seeks to self-perform.

(b) 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.

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

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

(e) 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.

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

(g) The firm does not currently owe any outstanding taxes, penalties, interest or other financial obligation to the County of Lehigh.

(h) 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.

(i) 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.

(j) 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.

(k) 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.

(l) 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.

(1) 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 ordinance, the definitions used in the Prevailing Wage Act and in the regulations promulgated pursuant thereto shall be considered and applied. 43 P.S. §165-2 and 34 Pa Code §9.102.

(2) 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.

(m) The firm has all other technical qualifications and resources, including equipment, personnel and financial resources, to successfully perform the referenced contract.

(n) The firm shall notify the County within seven (7) days of any material change to any matter attested to in this certification.

(o) 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.

(4) Execution of the Contractor Responsibility Certification required by this ordinance shall not on its own 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.

(5) 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.

(6) If a firm fails to provide a Contractor Responsibility Certification or a Subcontractor List and required subcontractor information as specified in §801.3(D)(1), 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.

(E) NOTICE OF INTENT TO AWARD CONTRACT

(1) After it has received bids for a project, the County shall issue an Award of Contract pursuant to § 805 of the Administrative Code subject to the conditions of this code, especially §801.3(D)(1).

(2) 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 (G), infra, of this ordinance, compliance with Subcontractor Certifications required by Section 5 of this ordinance, and any other qualification standards required by the County of Lehigh.

(F) SUBCONTRACTOR RESPONSIBILITY REQUIREMENTS

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

(2) At the time a perspective bidder submits the Subcontractor List it shall also submit to the County of Lehigh Subcontractor Responsibility Certifications for all listed subcontractors.

(3) 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.

(4) 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 subcontractors business.

(5) 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.

(6) Subcontractor Responsibility Certifications shall be executed by the respective subcontractors on forms prepared by the County of Lehigh and contain the same information, representations and supporting information required in Contractor Responsibility Certifications, including verification of apprenticeship qualifications required by Section 801.3(D)(3)(I) for each trade or classification of craft workers it will employ on the project.

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

(8) In the event that the County of Lehigh 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:

(a) 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 County of Lehigh.

(b) 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

(c) Disqualify the prospective awardee.

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

(G) CONTRACTOR RESPONSIBILITY REVIEW AND DETERMINATION

(1) In reviewing bids for completeness and adherence to this ordinance, the County of Lehigh 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.

(2) The County 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 County may seek relevant information from the firm, its prior clients or customers, its subcontractors or any other relevant source.

(3) 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 shall issue a formal written Contractor Responsibility Determination verifying that the prospective bidder is a qualified, responsible contractor.

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

(H) EXECUTION OF FINAL CONTRACT

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

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

(I) FALSE, INCOMPLETE OR MISLEADING RESPONSIBILITY CERTIFICATIONS

If the County 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 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.

(J) Every contract over \$25,000.00 pertaining to construction projects funded by the County of Lehigh 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 County-funded 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 said county borders in the Commonwealth of Pennsylvania.

(K) The requirement in Section 801.3 (J) 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.

(L) Every contract over \$25,000.00 pertaining to construction projects funded by the County of Lehigh shall specifically state that the developer/contractors shall be obligated to make sure that subcontractors adhere to the requirements stated in Section 801.3(J).

(M) The requirements stated in Sections 801.3 (J), (K) and (L) shall also apply to contracts pertaining to construction projects carried out by an authority and for which the County of Lehigh is a third party beneficiary.

(N) The local labor requirement stated in Section 801.3 (J) through (M) can only be waived for a maintenance project by a resolution of the Board of Commissioners.

(1) A resolution to waive a maintenance project from the requirement would specify in detail why federal and/or state funding of the project does not permit the local labor requirement.

(2) A resolution to waive a maintenance contract from the requirements of this ordinance must:

(a) show no person has submitted a bid; and

(b) all records for the bid process are made available to the Board of Commissioners; and

(c) waiver may only affect that maintenance contract; and

(d) for purposes of this legislation, the term "maintenance contract" shall be a contract for work involving the repair of existing facilities when the size, type or extent of such facilities is not thereby changed or increased.

(O) In the event that application of the requirements of this section would violate state or federal law, or would render the County of Lehigh 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:

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

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

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

(P) The term "construction project" as used in Section 801.3 is defined as "construction, renovation, and rehabilitation or demolition project."

3. The County Executive shall distribute copies of this Ordinance to the proper officers and other personnel of Lehigh County whose further action is required to achieve the purpose of this Ordinance.

4. The proper officers and other personnel of Lehigh County are hereby authorized and empowered to take all such further action and execute additional documents as they may deem appropriate to carry out the purpose of this ordinance.

5. Any Ordinance or part of any Ordinance conflicting with the provisions of this Ordinance is hereby repealed insofar as the same affects this Ordinance.

6. This Ordinance shall become effective ten (10) days after enactment.

ADOPTED this _____ day of _____, 2020, by the following vote:

Commissioners

AYE

NAY

Geoff Brace
Nathan Brown
Percy H. Dougherty
Bob Elbich
Marc Grammes
Dave Harrington
Dan Hartzell
Zakiya Smalls
Amy Zanelli

ATTEST: _____
Clerk to the Board of Commissioners

APPROVED this _____ day of _____, 2020.

Phillips M. Armstrong
Lehigh County Executive

ENACTED this _____ day of _____, 2020.