

ORDINANCE NO. 2975-2023

AN ORDINANCE OF THE TOWNSHIP OF HAVERFORD, DELAWARE COUNTY, COMMONWEALTH OF PENNSYLVANIA, AMENDING CHAPTER 4, ADMINISTRATION OF GOVERNMENT, PART 10, FISCAL AFFAIRS, SECTION 4- 1008, ESTABLISHMENT OF PURCHASING SYSTEM, TO ADOPT CERTAIN PROCEDURES RELATED TO THE SOLICITATION AND AWARD OF PUBLIC CONTRACTS WITHIN THE TOWNSHIP; PROVIDING FOR CERTIFICATION REQUIREMENTS FOR PUBLIC CONTRACTORS; PROVIDING FOR CERTIFICATION REQUIREMENTS FOR SUBCONTRACTORS ON PUBLIC CONTRACTS; PROVIDING FOR PUBLIC CONTRACT REVIEW PROCEDURES; REPEALING INCONSISTENT ORDINANCES OR PARTS OF ORDINANCES; CONTAINING A SAVINGS CLAUSE AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, pursuant to the Pennsylvania Statutes Title 53 P.S. Municipal and Quasi-Municipal Corporations § 56802, state competitive bidding law requires that most public works contracts be awarded to the lowest “*responsible*” bidder; 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; and

WHEREAS, many states and local jurisdictions in the U.S. face critical contracting needs now and in the future, including those for public works and infrastructure projects, that will require significant efforts to plan, manage and oversee major capital investments in both the short and long term; and

WHEREAS, in undertaking its infrastructure and other public works projects, the Township seeks to utilize reliable and efficient procurement procedures that will help ensure that its such 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;

WHEREAS, the Haverford Township Board of Commissioners wishes to revise its 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; and

WHEREAS, the Haverford Township Board of Commissioners is duly empowered to enact certain laws needed to protect its proprietary and financial interests relating to major capital investments it makes in public works contracts, and to protect the public health, safety and welfare of its residents;

WHEREAS, the Board of Commissioners has significant concerns regarding the challenges it faces in planning and executing public works construction and maintenance projects, especially those relating to its ability to ensure the use of qualified contractors and subcontractors and adequate numbers of skilled craft personnel who have industry-recognized training in the respective trades needed for public works projects;

WHEREAS, that Haverford Township Board of Commissioners is committed to addressing the challenges it faces relating to public works projects by enacting necessary and appropriate procurement legislation to protect its proprietary and financial interests and create adequate safeguards to ensure the successful delivery of such projects to the fullest extent possible; and,

NOW, THEREFORE, BE IT RESOLVED and ENACTED by the Board of Commissioners of Haverford Township, as follows:

SECTION 1. CODE AMENDMENT.

A. The Haverford Township Code, Chapter 44, Administration of Government, Part 10, Fiscal Affairs, Section 4-1008, Establishment of Purchasing System, Subsection E, to provide for a new Subsection E(4) to provide as follows:

(4) Responsible Contractor Bidding Requirements.

(a) Purpose.

Haverford 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 such contracts in a timely, reliable and cost-effective manner.

To effectuate the purpose of selecting responsible contractors for these 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 qualification standards regarding past project performance in terms of competency, safety and law compliance, technical abilities, experience, and adequacy of resources.

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 to promote successful project delivery and help ensure future workforce development.

Therefore, the Township shall require compliance with the provisions of these Responsible Contractor Bidding Requirements by business entities seeking to provide services as specified herein. The requirements of these requirement are intended to supplement, not replace, existing contractor qualification standards or other criteria currently required by the Township. However, in the event that these requirements conflict with any law, public policy, or contracting documents of the Township, these Responsible Contractor Bidding Requirements shall prevail.

(b) Responsible Contractor Requirements.

[1] These Responsible Contractor Bidding Requirements set forth herein shall apply to public works projects valued at \$250,000 or more undertaken by the Township for construction, demolition, alteration, renovation, modernization, service or maintenance of buildings, structures or facilities. 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 herein.

[2] All firms engaged in public works contracts subject to these Responsible Contractor Requirements, 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] The firm will pay all craft employees on the project, at a minimum, the applicable prevailing 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.*

(c) Contractor Responsibility Certifications.

[1] As a condition of performing work on a public works contract subject to these Responsible Contractor Bidding Requirements, 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 a bid for contract.

[2] 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.

[3] 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:

- i. The firm and its employees have all licenses, registrations, certificates or other credentials required by federal, state, or county law and the laws of the Township 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, certificates for any type of construction or maintenance trade work or specialty work which the firm seeks to self-perform.
- ii. The firm meets the bonding requirements for the contract required by applicable law or contract specifications, and any insurance requirements, as well as applicable insurance requirements for the contract, including general liability, workers compensation and unemployment insurance.
- iii. The firm has not been debarred or suspended by any federal, state or local government agency or authority in the past three years.
- iv. The firm has not defaulted on any project in the past three years.
- v. The firm has not had any type of business, contracting or trade license, registration or certification revoked or suspended in the past three years.
- vi. The firm and its principals/owners have not been convicted of any crime relating to its contracting business in the past ten (10) years.
- vii. 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 \$1,000 or more.
- viii. 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.
- ix. 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 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.
- x. 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 and shall continue to participate in such program or programs for the duration of the project. This requirement, along with the requirements specified in subsection xi below of these Responsible Contractor Bidding Requirements help ensure that workers

employed on the project are participants in or graduates of bona fide apprenticeship training programs in each trade or craft in which their services are utilized, as evidenced by the fact that the program is registered with federal or state government and has been in continuous existence for no fewer than five (5) years prior to the project relating to the certification.

1. For purposes of this section, 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.
 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 for each trade or classification listed.
- xi. 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 journey person workers who have successfully completed a Class A Apprenticeship Program, as defined in subsection x above, or apprentices registered in such programs. The apprenticeship participation of specified by this section must be in the same trade or craft for which the workers are employed on the project.
 - xii. 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 these requirements.
 - xiii. The firm shall 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.
 - xiv. 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.
 - xv. The firm shall notify the Township within seven days of any material changes in its operation that relate to any matter attested to in this certification.

[4] Execution of the Contractor Responsibility Certification required by these Responsible Contractor Bidding Requirements 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 information regarding the firm’s 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.

[5] 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 Subsection (e) below, Subcontractor Responsibility Requirements.

[6] 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.

[7] If a firm fails to provide a Contractor Responsibility Certification required by this section in any bid to the Township, such failure shall constitute grounds to reject such bid as non-compliant with these requirements 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.

(d) Notice of Intent to Award Contract.

[1] 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.

[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 subsection f below (Contractor Responsibility Review and Determination), compliance with Subcontractor Certifications required by subsection (e) below (Subcontractor Responsibility Requirements), and any other qualification standards required by the Township.

(e) Subcontractor Responsibility Requirements.

[1] Within fourteen (14) days of receiving a Notice of Intent to Award Contract, the prospective awardee shall submit a Subcontractor List, which provides the names and addresses 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.

[2] 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 the requirements of these Responsible Contractor Bidding Requirements.

[3] At the time a prospective awardee submits the Subcontractor List, all subcontractors will be identified on the Subcontractor List submitted by any bidder and Subcontractor

Responsibility Certifications shall be submitted with supporting documentation by a prospective awardee to the Township.

[4] 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.

[5] 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 must 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 verifications of apprenticeship qualifications as required in subsection (3)[c]xi above, for each trade or classification of craft workers it will employ on the project.

[6] 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.

[7] 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.

[8] In the event that the Township determines that a subcontractor fails to meet the requirements of these Responsible Contractor Bidding Requirements or is otherwise determined to be non-responsible, it may, after informing the prospective awardee, exercise one of the following options:

- i. 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 Township.
- ii. 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
- iii. Disqualify the prospective awardee.

[9] In the event a subcontractor is disqualified under these Responsible Contractor Bidding Requirements, the general contractor, construction manager or other lead or prime contractor shall not be permitted to make any type of claim against the Township on the basis of a subcontractor disqualification.

(f) Contractor Responsibility Review and Determination.

[1] After the Township has issued a Notice of Intent to Award Contract to the lowest responsible 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 these Responsible Contractor Bidding Requirements, this Part, and other applicable laws and regulations. The time frame for conducting this review process shall be as determined by the Township.

[2] As part of the review process, the Township shall ensure that the Contractor Responsibility Certification, the Subcontractor List, the Subcontractor Responsibility Certifications, and all applicable supporting information comply with the requirements of these Responsible Contractor Bidding Requirements.

[3] The Township of Haverford 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.

[4] If at the conclusion of its internal review, the Township determines that all responsibility certifications have been properly completed and executed, and if the Township concludes that the qualifications and background of the prospective awardee and the firms on its Subcontractor List are satisfactory to deem the firms as responsible contractors under these requirements, the Township shall issue a written Contractor Responsibility Determination verifying that the prospective awardee is a qualified, responsible and responsive contractor.

[5] In the event a firm is determined to be non-responsible, the Township 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 Township obtains relevant information warranting any such revocations.

(g) Execution of Final Contract and Public Review.

[1] A contract subject to these Responsible Contractor Bidding Requirements shall not be executed until all requirements of these requirements have been fulfilled and until a Contractor Responsibility Determination has been issued by the Township pursuant to subsection (f) above.

[2] Prior to the execution of a final contract under this Part, the Township 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 a publicly available website for public inspection for a period of ten (10) calendar days after the issuance of the Contractor Responsibility Determination.

(h) False, Incomplete or Misleading Responsibility Certifications.

If the Township 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 the Township for a period of three (3) years. The Township 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.

(i) Emergencies.

Should Haverford Township determine, in accordance with the provisions of the Township Charter, Section 4-1008(F) below, and/or First Class Township Code, that emergency circumstances exist pursuant to the conditions set forth in Section 4-1008(F)(1) below, then the Township may award a procurement contract without application of the terms of these Responsible Contractor Bidding Requirements.

B. The Haverford Township Code, Chapter 44, Administration of Government, Part 10, Fiscal Affairs, Section 4-1008, Establishment of Purchasing System, Subsection E(1) is hereby amended as follows:

- (1) Responsible bidders list. There shall be established and maintained a bidders list for each type of goods or service purchased by the Township. Inclusion on the bidders list shall signify that a bidder is considered responsible, either through previous experience in business dealings with the Township or through an investigation of the credit, reliability and performance of the bidder. Once qualified as responsible, a bidder shall remain on the bidders list indefinitely unless removed by reason of disqualification. When applicable, a bidder shall also meet the requirements set forth below under Subsection (4), Responsible Contractor Bidding Requirements, in order to qualify as, and remain, a responsible bidder.

C. The Haverford Township Code, Chapter 44, Administration of Government, Part 10, Fiscal Affairs, Section 4-1008, Establishment of Purchasing System, Subsection E(2) is hereby amended as follows:

- (2) Disqualification of bidders. A bidder may be disqualified for reasons including but not limited to the following:
 - (a) Previous unsatisfactory experience with the bidder by the Township or other recipient of the bidder's goods or services.
 - (b) Failure to submit a bid on two successive occasions.

- (c) False or misleading statements about a product or service.
- (d) An attempt by a bidder to influence the purchase of goods or services by the Township through a gift, gratuity, favor or benefit or promise thereof to a Township officer or employee.
- (e) Collusion with another bidder in an attempt to regulate the price, quality or availability of goods or services to the detriment of the Township.
- (f) When applicable, the bidder provides false or misleading information in violation of Subsection E(4)(h) below.

D. The Haverford Township Code, Chapter 44, Administration of Government, Part 10, Fiscal Affairs, Section 4-1008, Establishment of Purchasing System, Subsection E(3) is hereby amended as follows:

(3) Invitation to bid.

(a) (Reserved)

(b) An invitation to bid shall be sent by mail to all vendors appearing on the bidders list for the item to be purchased. The invitation shall include the following:

[1] A basic description of the item to be purchased.

[2] The quantity to be purchased.

[3] A copy of the specification and bid documents or instructions on the method by which they may be obtained.

[4] The date, time and place of the bid opening.

[5] When applicable, that a Contractor Responsibly Certification is required.

[6] Any other specific requirements.

SECTION 2. REPEALER. In addition to the above, all other ordinances or parts of ordinances that are inconsistent herewith, are hereby repealed. Further, it is understood and intended that all other sections, parts, provisions, and ordinances that are not otherwise specifically in conflict with or inconsistent with this Ordinance, shall remain in full force and effect, the same being reaffirmed hereby.

SECTION 3. SEVERABILITY. In the event that any section, sentence, clause, phrase or word of this Ordinance shall be declared illegal, invalid or unconstitutional by any Court of competent jurisdiction, such declaration shall not prevent, preclude, or otherwise foreclose enforcement of any of the remaining portions of this Ordinance.


SECTION 4. FAILURE TO ENFORCE NOT A WAIVER. The failure of the Township to enforce any provision of this Ordinance shall not constitute a waiver by the Township of its rights of future enforcement hereunder.

SECTION 5. EFFECTIVE DATE. This Ordinance shall become effective 10 days following final adoption by the Board of Commissioners and publication as required by law.

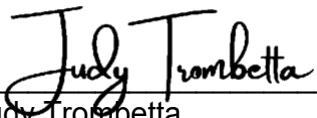
APPROVED and ADOPTED this 8th day of May, 2023.

ATTEST:

TOWNSHIP OF HAVERFORD

By: 

David R. Burman,
Township Manager/Secretary

By: 

Judy Trombetta
President
Board of Commissioners