

BERGEN COUNTY FREEHOLDERS
NOTICE OF PENDING HEARING
ORDINANCE 18-15

Ordinance 18-15 “Establishing Responsible Bidder Requirement for Public Works Projects estimated to Equal or Exceed \$250,000.00 as a pre-qualification to bidding”, was passed at a meeting of the governing body of the County of Bergen, a body politic and corporate of the State of New Jersey (the “County”), held on May 23, 2018. Adoption of “Establishing Responsible Bidder Requirement for Public Works Projects estimated to Equal or Exceed \$250,000.00 as a pre-qualification to bidding” will be considered after a public hearing thereon, at a meeting of the governing body to be held at One Bergen County Plaza, Hackensack, New Jersey, on June 20, 2018 at 7:30 PM. During the time prior to and up to and including the date of such meeting, copies of the Ordinance to establish “Responsible Bidder Requirement for Public Works Projects estimated to Equal or Exceed \$250,000.00 as a pre-qualification to bidding” will be made available at the Clerk to the Board of Chosen Freeholders’ office to the members of the general public who shall request the same and will be posted on the County’s website in the following location: <https://www.co.bergen.nj.us/183/Planning-Engineering>

Lara Rodriguez, Clerk to the Board of Chosen Freeholders

ORDINANCE 18-15

BE IT ORDAINED by the Governing Body of the County of Bergen, as follows:

1. Findings.

The Governing Body makes the following findings:

- A. The County has proprietary and governmental interests in high standards, high qualifications and a high level of safety for workers and the general public. Those interests are fostered and benefitted by requiring bidders who desire to bid on public works projects with an estimated cost of construction equal to or exceeding \$250,000.00 to employ highly skilled workers.
- B. Using formally trained trade and craft workers ensures a level of competence, productivity, and worker safety that contributes to the timely and cost effective completion of public works projects.

- C. A registered apprenticeship provides for a formal training arrangement that includes a paid-work component and an educational or instructional component, wherein an individual obtains workplace-relevant knowledge and skills.
- D. Registered apprenticeship programs are a written plan designed to move an apprentice from a low or no skill entry-level position to full occupational proficiency. These programs must meet parameters established under the National Apprenticeship Act that are designed to protect the welfare of the apprentice. The Act and its promulgating regulations are administered by the Department of Labor's Office of Apprenticeship and the New Jersey Department of Labor and Workforce Development.
- E. Bergen County Technical Schools has been designated as the County Apprenticeship Coordinator by the State of New Jersey and approved by the United States Department of Labor Office of Apprenticeship.
- F. The publication "Apprenticeship Training In New Jersey - Directory of Information and Resources" prepared by the State of New Jersey Department of Labor and Workforce Development Division of Business Services - Office of Workforce Initiatives describes the benefits that apprenticeship programs provide to the public including but not limited to:
 - 1. Developing and maintaining a highly skilled workforce which has "learned how to learn" and which is well prepared to adapt to an ever changing employment and economic environment that is the hallmark of today's global economy, and
 - 2. Increased productivity from apprentices who are more versatile and better able to solve work-related problems than untrained workers.
- G. The governing body may, in accordance with N.J.S.A. 40A:11-25, establish reasonable regulations appropriate for controlling the qualifications of prospective bidders upon contracts to be awarded on behalf of the contracting unit, and may adopt a standard form of statement or questionnaire for bidders showing the bidder's financial ability and experience in performing public sector work, to the satisfaction of the County.
- H. A highly skilled workforce ensures lower costs for repairs and maintenance over the lifetime of a completed public works project; ensures that trade and craft workers have been properly trained to adapt to an ever changing employment and economic environment that is the hallmark of today's global economy; and allows

the apprentices to be better trained which ultimately increases productivity and safety in the workplace.

- I. N.J.S.A. 40A:11-13 provides that any specifications for the provision or performance of goods or services shall be drafted in a manner to encourage free, open and competitive bidding and that no specifications may “(a) Require any standard, restriction, condition or limitation not directly related to the purpose, function or activity for which the contract is awarded.”
- J. A requirement that a responsible bidder is one who participates in an apprenticeship program is consistent with N.J.S.A. 40A:11-13 in as much as the requirement is directly related to the cost, efficiency, skilled labor force, quality, safety and timeliness of the County's public works projects.
- K. An apprenticeship program requirement as a condition of responsible bidder determination is consistent with N.J.S.A. 40A:11-6.1 which requires that public contracts be awarded not to the lowest bidder, but to the "lowest responsible bidder".
- L. Requiring apprenticeship programs as an element of responsibility places all bidders on equal footing and does not unnecessarily limit the number or type of bidders on public contracts, as all contractors will have a fair and equal chance to bid on County contracts.
- M. Requiring apprenticeship programs as an element of responsibility supports State of New Jersey policy as set forth in N.J.S.A. 34:1A-37 and N.J.S.A. 52:38-1:
 - 1. The State of New Jersey, as set forth in N.J.S.A. 34: 1A-37 as an example, has recognized the inherent good in the encouragement and promotion of apprenticeship agreements and supports apprenticeship programs through programs of the State Department of Labor and Workforce Development;
 - 2. The State of New Jersey, as set forth in N.J.S.A. 52:38-1, has determined that a highly skilled workforce ensures lower costs for repairs and maintenance over the lifetime of a completed project and such a requirement is directly related to the contract activity;
- N. Apprenticeship programs that train highly skilled workers and improve efficiency in government projects further the purposes of the Local Public Contracts Law.

2. Definitions.

Unless otherwise apparent from the context, the following words shall have the meanings set forth herein:

- A. The “Director” means the Director of the Division of Local Government Services within the Department of Community Affairs.
- B. “Lowest responsible bidder or vendor” means the bidder or vendor: (a) whose response to a request for bids offers the lowest price and is responsive; and (b) who is responsible.
- C. “Public works project” means any construction, reconstruction, demolition, alteration, custom fabrication, or repair work, or maintenance work, including painting and decorating, done under contract and paid for in whole or in part out of the funds of a public body, except work performed under a rehabilitation program or work performed under a contract for road resurfacing.
- D. “Responsible” means able to complete the contract in accordance with its requirements, including but not limited to requirements pertaining to experience, moral integrity, operating capacity, financial capacity, credit, and workforce, equipment, and facilities availability.
- E. “Responsive” means conforming in all material respects to the terms and conditions, specifications, legal requirements, and other provisions of the request; and
- F. “Apprenticeship program” means a registered apprenticeship program providing to each trainee combined classroom and on-the-job training under the direct and close supervision of a highly skilled worker in an occupation recognized as an apprenticeable trade, and registered by the Bureau of Apprenticeship and Training of the U.S. Department of Labor and meeting the standards established by the bureau, or registered by a State apprenticeship agency recognized by the bureau.

3. Registered Apprenticeship Program Required for Public Works Projects.

- A. It is hereby established by the governing body that participation in a registered apprenticeship program shall be a necessary qualification for all contractors and subcontractors, including lower-tier subcontractors seeking perform work on any public works project for which the County estimates that the total cost of the

project, exclusive of any land acquisition costs, will equal or exceed two hundred fifty thousand dollars (\$250,000),.

B. All bidders on public works projects for which the County estimates that the total cost of the project, exclusive of any land acquisition costs, will equal or exceed two hundred fifty thousand dollars (\$250,000) shall provide evidence that, at the time of the bid, the bidder and all of the bidder's subcontractors participate in registered apprenticeship programs for each of the trades of work contemplated under the awarded contract for which a registered apprenticeship program exists. Any bidder who fails to submit such evidence shall not be deemed a responsible bidder.

C. It shall be a term and condition of any and all contracts for a public works project for which the County estimates that the total cost of the project, exclusive of any land acquisition costs, will equal or exceed two hundred fifty thousand dollars (\$250,000) that all lower-tier subcontractors (e.g. sub-subcontractors and below) must provide evidence of participation in registered apprenticeship programs for each of the trades of work contemplated under the awarded contract prior to execution of any subcontract governing work on the public works project and prior to performing any work on said public works project.

4. Incorporation into Bid Documents and Contracts.

The requirements of this Ordinance shall be incorporated into the County's bid specifications and contracts for public works projects for which the County estimates that the total cost of the project, exclusive of any land acquisition costs, will equal or exceed two hundred fifty thousand dollars (\$250,000). Any violation of this Ordinance may constitute a breach of such contract.

5. Repealer.

All Ordinances or parts of Ordinances inconsistent herewith are repealed as to such inconsistencies.

6. Severability.

If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be

deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

7. Director Approval Required.

A. Upon adoption, a certified copy of this Ordinance shall be submitted to the Director of the Division of Local Government Services for approval together with such other documents as shall be required by Director, in accordance with the requirements of Local Finance Notice 2016-12 or such successor directive issued by the Division of Local Government Services prior to adoption of this Ordinance. For guidance purposes, Local Finance Notice 2016-12 requires the submission of the following documents in addition to the Ordinance:

- Copies of the two (2) newspaper legal advertisements, and any other advertisements, for the public hearing;
- Certified and sealed copy of the governing body's resolution (by the governing body's clerk or secretary) adopting the regulations;
- A true, certified and sealed copy of the transcript of the public hearing held pursuant to N.J.S.A. 40A:11-25. The transcript shall be certified by the governing body's clerk or secretary; and
- A completed, certified and sealed (by the governing body's clerk or secretary) Standard Certification Form. Please note that the Certification Form has been updated to require additional information and shall be utilized in lieu of the prior form.

8. Effective Date and Sunset Provision.

A. Pursuant to N.J.S.A. 40:41A-101, all ordinances take effect twenty days after final passage by the Board of Chosen Freeholders and approval by the County Executive.

B. Notwithstanding the foregoing, in accordance with N.J.S.A.40A:11-25, this Ordinance shall not take effect unless and until this Ordinance and required accompanying documentation have been submitted to the Director for approval in accordance with Section 7 of this Ordinance, and either (1) the Director grants such

approval in writing, or (2) the Director fails to approve or disapprove the Ordinance within 30 days of its receipt by the Director.

- C. In the event the Director approves this Ordinance only for a limited duration, this Ordinance shall cease to be effective, and shall no longer constitute a requirement for bidding for or performing work under a contract advertised subsequent to the expiration of such approval.