

**BOROUGH OF BROOKHAVEN
DELAWARE COUNTY, PENNSYLVANIA**

ORDINANCE NO. 827

AN ORDINANCE OF BROOKHAVEN BOROUGH, PROVIDING FOR THE ADOPTION OF CERTAIN PROCEDURES RELATED TO THE SOLICITATION AND AWARD OF PUBLIC CONTRACTS WITHIN BROOKHAVEN BOROUGH, 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 Brookhaven Borough 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; and

NOW, THEREFORE, BE IT ORDAINED AND ENACTED that Brookhaven Borough, hereby adopts the following contractor qualification standards, procedures and related requirements for public works contracts as specified herein:

SECTION 1

§1. Purpose

Brookhaven Borough 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 Brookhaven Borough'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 and law compliance, technical abilities, experience, and adequacy of resources.

Therefore, the Brookhaven Borough shall require compliance with the provisions of this ordinance by business entities seeking to provide services as specified herein. The requirements of this ordinance are intended to supplement, not replace, existing contractor qualification standards or other criteria currently required by Brookhaven Borough. However, in the event that this ordinance conflicts with any law, public policy or contracting documents of Brookhaven Borough, the requirements of this ordinance shall prevail.

§2. Responsible Contractor Requirements

- (a) This ordinance shall apply to public works projects undertaken by Brookhaven Borough for construction, demolition, alteration, renovation, modernization, service or maintenance of buildings, structures or facilities valued at \$100,000 or more. 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, determined by the current Brookhaven Borough Engineer.

§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 Brookhaven Borough 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 Brookhaven Borough 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 has not been cited for a willful violation of federal or state safety laws determined by a final decision of a court or government agency in the past ten (10) years

- (7) The firm and its principals/owners have not been convicted of any crime relating to its contracting business in the past ten (10) years.
 - (8) 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.
 - (9) The firm will employ enough labor personnel as required to successfully perform any project work it self-performs or shall use qualified subcontractors to meet this requirement and shall assign workers to perform only work in their respective skill for which they have sufficient skills and training or shall use qualified subcontractors to meet this requirement.
 - (10) The firm will pay all employees on the project, at a minimum, the applicable federal or state wage and fringe benefit rates, as established for the classification in which the worker is employed.
 - (11) The firm will ensure that all personnel on the project will follow all OSHA regulations for safety.
 - (12) 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 using qualified, responsible subcontractors or vendors.
 - (13) The firm shall notify Brookhaven Borough within seven days of any material changes in its operation that relate to any matter attested to in this certification.
- (d) Execution of the Contractor Responsibility Certification required by this ordinance shall not establish a presumption of contractor responsibility, and Brookhaven Borough 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. Brookhaven Borough 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 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.
 - (f) 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 Brookhaven Borough 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, Brookhaven Borough shall issue a Notice of Intent to Award Contract to the firm that has submitted the lowest responsive and responsible bid. The Lowest Responsive and Responsible Bidder is the bidder who fully complied with all the bid requirements and whose past performance, reputation, and financial capability is deemed acceptable, and who has offered the most advantageous pricing or cost benefit, based on the criteria stipulated in the bid documents.
- (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 Brookhaven Borough.

§5. Subcontractor Responsibility Requirements

- (a) The prospective awardee shall submit with the bid a Subcontractor List, that 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 and applicable supporting information as required by this section.
- (b) The prospective awardee shall not be permitted to use a subcontractor on any work performed for Brookhaven Borough unless it has identified the subcontractor on its Subcontractor List and provided a Subcontractor Responsibility Certification in accordance with the requirements of Section 5.
- (c) 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 is required to maintain to do business in Pennsylvania.
- (d) Subcontractor Responsibility Certifications shall be executed by the respective subcontractors on forms prepared by Brookhaven Borough and contain the same information, representations and supporting information required in Contractor Responsibility Certifications.
- (e) 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.
- (f) A subcontractor listed on a firm's Subcontractor List shall not be substituted unless written authorization is obtained from Brookhaven Borough and a Subcontractor Responsibility Certification is provided for the substitute subcontractor.
- (g) In the event that Brookhaven Borough 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, a completed Subcontractor Certification for the substitute, and obtain approval of the substitute by Brookhaven Borough.
 - (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.
- (h) 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 Brookhaven Borough based on a subcontractor disqualification.

§6. Contractor Responsibility Review and Determination

- (a) After Brookhaven Borough 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. The time frame for conducting this review process shall be as determined by Brookhaven Borough.
- (b) As part of the review process, Brookhaven Borough shall ensure that the Contractor Responsibility Certification and Subcontractor Responsibility Certifications and applicable supporting information comply with the requirements of this ordinance.
- (c) Brookhaven Borough 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, Brookhaven Borough may seek relevant information from the firm, its prior clients or customers, its subcontractors or any other relevant source.
- (d) After Brookhaven Borough 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, Brookhaven Borough 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 Brookhaven Borough obtains relevant information warranting any such revocations.

§7. Execution of Final Contract

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 Brookhaven Borough pursuant to Section 6.

§8. False, Incomplete or Misleading Responsibility Certifications

If Brookhaven Borough 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 Brookhaven Borough for a period of three years. Brookhaven Borough 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.

SECTION 2

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.

SECTION 3

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, Brookhaven Borough Council 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.

SECTION 4


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

ENACTED AND ORDAINED into law by the Borough Council of Brookhaven Borough, Delaware County, Pennsylvania, this 7 day of NOVEMBER, 2022.

BOROUGH OF BROOKHAVEN

By: 
TERRY HELLER, PRESIDENT

ATTEST:


JOHN J. WILWERT, JR.
BOROUGH SECRETARY

EXAMINED AND APPROVED this 4 of NOVEMBER, 2022


DENISE LESLIE, MAYOR



CONTRACTOR RESPONSIBILITY CERTIFICATION

Firm Name: _____

Firm Address: _____

Contact Name: _____

Telephone No.: _____

Fax No.: _____

Email Address: _____

Project Name: _____

The submitting firm is required to certify compliance with the contractor responsibility standards set forth below by checking appropriate boxes and providing the supplemental information when submitting the bid.

1. Does the firm have, or will it obtain all valid, effective licenses, registrations or certificates required by federal, state, county, or local law, 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 be limited to, licenses, registrations, or certificates for any type of trade work or specialty work which the firm proposes to self-perform?
 Yes No

2. Does the firm meet the bonding requirements for the contract as required by applicable law or contract specifications and any insurance requirements as required by applicable law or specifications, including general liability insurance, workers compensation insurance and unemployment insurance requirements?
 Yes No

3. Has the firm been debarred by any federal, state or local government agency or authority in the past three (3) years?
 Yes No

4. Has the firm defaulted on any project in the past three (3) years?
 Yes No

5. Has the firm had any type of business, contracting or trade license, registration, or other certification suspended or revoked in the past three (3) years?
 Yes No

6. Has the firm been cited for a willful violation of federal or state safety laws determined by a final decision of a court or government agency in the past ten (10) years?
 Yes No



7. Has the firm or its owners been convicted of any crime relating to the contracting business as determined by a final decision of a court or government agency in the past ten (10) years?
 Yes No
8. Has the firm, in the past three (3) years, been found by a final decision of a court or government agency in violation of any law applicable to its contracting business, including, but not limited to, licensing laws, tax laws, prompt payment laws, wage and hour laws, prevailing wage laws, environmental laws or other, 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?
 Yes No
9. Does the firm agree to employ enough labor personnel as required to successfully perform any project work it self-performs or shall use qualified subcontractors to meet this requirement and shall assign workers to perform ONLY work in their respective skill for which they have sufficient skills and training or shall use qualified subcontractors to meet this requirement?
 Yes No
10. Does the firm agree to pay all employees that it employs on the project the current wage rates and benefits as required under applicable federal or state wage laws for the duration of the referenced project?
 Yes No
11. Does the firm have all other technical qualifications and resources, including equipment, personnel, and financial resources, to perform the referenced contract, or agree that it will obtain some through the use of qualified, responsible subcontractors?
 Yes No
12. Does the firm have at least the OSHA ten (10) hour training course for safety established by the U.S. Department of Labor, Occupational Safety and Health Administration?
 Yes No
13. Does the firm agree to notify the Borough Office of any material changes to any matters attested to in this certification within seven (7) days?
 Yes No
14. Does the firm understand and agree that it shall provide a Subcontractor List that identifies any subcontractors it will use in connection with the project and furnish Contractor Responsibility Certifications for all identified subcontractors with all required supporting documentation at the time of submitting the bid.
 Yes No
15. Does the firm understand and agree that this certification must be completed by an authorized representative of the firm that has sufficient knowledge and information to address all matters addressed here?
 Yes No



BROOKHAVEN Pennsylvania
Delaware County **BOROUGH**

2 CAMBRIDGE RD · BROOKHAVEN, PA 19015
610-874-2557 · FAX 610-874-2612

In executing this Responsibility Certification, the submitting firm understands and agrees that if the Borough determines that this certification contains false or misleading material information that was provided knowingly or with reckless disregard of the truth or omits material information knowingly or with reckless disregard of the truth, the firm may be prohibited from performing work for the Borough for a period of three (3) years. Such circumstances shall also subject the firm to any other penalties and sanctions, including contract termination, available to the Borough under law. A contract terminated under these circumstances shall further entitle the Borough to withhold payment of any monies due to the firm as damages.

I certify that the foregoing representations regarding the past performance and present qualifications of the undersigned firm are true and correct.

Sign Name

Print Name

Title

Name of Firm

Date

Subscribed and sworn to before
me this ____ day of _____, 20__.

Notary Public

My Commission Expires: _____