

**BOROUGH OF HATBORO  
MONTGOMERY COUNTY, PENNSYLVANIA**

**ORDINANCE NO. 1060**

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**AN ORDINANCE OF THE BOROUGH OF HATBORO, MONTGOMERY COUNTY, PENNSYLVANIA AMENDING CHAPTER 1 TITLED "ADMINISTRATION AND GOVERNMENT" OF THE BOROUGH CODE TO ADD A NEW PART 9 TITLED "RESPONSIBLE CONTRACTORS" AND ADOPTING RESPONSIBLE CONTRACTOR PROVISIONS FOR PUBLIC CONTRACTS EXCEEDING \$250,000; PROVIDING A SEVERABILITY CLAUSE AND A REPEALER CLAUSE; AND PROVIDING FOR AN EFFECTIVE DATE**

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**WHEREAS**, the Borough of Hatboro desires to adopt certain provisions to ensure that contractors and subcontractors that perform work valued at over TWO HUNDRED AND FIFTY THOUSAND DOLLARS (\$250,000) on any public facility or public works project meet certain minimum requirements to insure that they have the capacity, the expertise, the personnel, and other qualifications and resources necessary to successfully perform public contracts in a timely, reliable and cost-effective manner; and

**WHEREAS**, Borough Council find that such provisions shall serve the best interest of the citizens of Hatboro, by requiring that all bidders for public projects shall possess the highest qualifications necessary to perform public contracts; and

**WHEREAS**, the Borough is required, pursuant to Section 1402 of the Borough Code, to award public contracts to the lowest "responsible" bidder, and the Borough deems "responsible" bidders to possess all the qualifications, expertise, personnel and resources set forth under these regulations;

**NOW, THEREFORE, BE IT ORDAINED AND ENACTED** and it is hereby ordained and enacted as follows:

**SECTION I. AMENDMENT OF CHAPTER 1, TITLED "ADMINISTRATION AND GOVERNMENT" TO ADD RESPONSIBLE CONTRACTOR REQUIREMENTS.**

Chapter 1, titled "Administration and Government" of the Code of Hatboro Borough is hereby amended to add a new Part 9, titled "Responsible Contractors" containing the following language and provisions:

**§902 Responsible Contractor Requirements.**

A. All contractors and subcontractors of any tier that perform work valued at over Two Hundred and Fifty Thousand Dollars (\$250,000.00) on any public facility or public works project, including construction, alteration, renovation, repair, service (excluding trash hauling) or maintenance work, shall meet the requirements of 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 law compliance, integrity and business ethics.

C. If after three attempts by Hatboro to award a contract to a responsible bidder, as defined in this section, no bidder is determined to meet the requirements of this section, this section shall not apply to subsequent attempts to bid the project.

**§903 Contractor Responsibility Certifications.**

A. As a condition of performing work on a public work's contract subject to this section, 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 its bid for a contract.

B. The Contractor Responsibility Certification shall be completed on a form provided by Hatboro and shall 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 (hereinafter the "Firm") shall confirm the following facts regarding its past performance and work history and its current qualifications and performance capabilities:

- (1) The Firm has 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 local; and (b) perform the contract work it seeks to perform. These shall include, but are not limited to, licenses, registrations or certificates for any type of trade work or specialty work which the Firm proposes to self-perform.

## PART 9: RESPONSIBLE CONTRACTORS

### §901 Purpose.

A. The Borough of Hatboro (hereinafter "Hatboro") 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 public contracts in a timely, reliable and cost-effective manner.

B. To effectuate the purpose of selecting responsible contractors for public contracts and to protect Hatboro investments in such contracts, prospective contractors and sub-contractors should be required to meet pre-established, clearly defined, minimum standards relating to contractor responsibility, including requirements and criteria concerning: technical qualifications; competency; expertise; adequacy of resources, including equipment, financial and personnel, and satisfactory records regarding past project performance, safety, law compliance and business integrity.

C. Further, due to the critical impact that skilled construction craft labor has on public works projects, and due to the limited availability of skilled construction craft labor and imminent craft labor skill shortages, it is necessary to require contractors and subcontractors to participate in established, formal apprenticeship training programs as a condition of bidding, for the purpose of both promoting successful project delivery and ensuring future workforce development. Hatboro also recognizes that it is beneficial to the local community to ensure that firms receiving public contracts provide adequate wages and benefits to their employees and utilize fair business, employment and training practices that have a positive impact on local communities affected by such contracts.

D. Therefore, Hatboro shall require compliance with the provisions of this Part 9 (hereafter also referred to as "section") by business entities seeking to provide services to Hatboro as specified herein. The requirements of this section are intended to supplement, not replace, existing contractor qualifications and performance standards or criteria currently required by law, public policy or contracting documents. However, in the event that any of the provisions of this section conflict with any law, public policy or contracting documents of Hatboro, this section shall prevail.

(2) The Firm meets the bonding requirements for the contract, as required by applicable law or contract specifications and any insurance requirements, as required by applicable law or contract specifications, including general liability insurance, workers compensation insurance and unemployment insurance requirements.

(3) The Firm has not been debarred by any federal, state or local government agency or authority in the past three (3) years.

(4) The Firm has not defaulted on any project in the past three (3) years.

(5) The Firm has not had any type of business, contracting or trade license, registration, or other certification suspended or revoked in the past three (3) years.

(6) The Firm has not been cited for a willful violation of federal or state safety laws in the past three (3) years.

(7) The Firm and its owners have not been convicted of any crime relating to the contracting business by a final decision of a court or government agency in the past ten years.

(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, licensing laws, tax laws, prompt payment 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.

(9) The Firm will pay all craft employees that it employs on the project the current wage rates and benefits as required under applicable federal, state, or local wage laws.

(10) The Firm participates in a Class A Apprenticeship Program 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.

(a) 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

journeyperson status for a least three (3) of the past five (5) years;  
and

(b) If a Firm is identified as the lowest responsible bidder or otherwise selected as the prospective awardee or as a subcontractor of an awardee, it shall provide appropriate documentation, as determined by Hatboro, to verify it meets the requirements of this section for each trade or classification of craft workers it will employ on the project. This verification shall be provided prior to performance of work by the Firm.

(11) The Firm has all other technical qualifications and resources, including equipment, personnel, and financial resources, to perform the referenced contract, or will obtain same through the use of qualified, responsible subcontractors.

(12) The Firm will maintain all qualifications, resources and capabilities referenced in this certification throughout the duration of the project.

(13) The Firm shall notify Hatboro within seven (7) days of any material changes to all matters attested to in this certification.

(14) 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 establish a presumption of contractor responsibility and Hatboro 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. Hatboro 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. The submitting form 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 Section 905 of this section.

F. If the submitting Firm has ever operated under another name, or controls or is controlled by another company or business entity, or if in the past five (5) years the submitting Firm controlled or was controlled by another company or

business entity, whether as a party 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 the other entity if the relationship in question could potentially impact contract performance.

G. 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 Hatboro because of its refusal to accept a bid for failing to provide information required by this section.

**§904 Notice of Intent to Award Contract.**

A. After it has received bids for a project, Hatboro shall issue a Notice of Intent to Award Contract to the Firm offering the lowest responsive bid.

B. Such Notice shall be issued immediately or as soon as practicable after bids are submitted and shall stipulate that the contract award will be conditioned on the issuance of a written Contractor Responsibility Determination, as required by Section 906 of this section and any other conditions determined appropriate by Hatboro.

**§905 Subcontractor Lists, Subcontractor Responsibility Certifications.**

A. Within seven (7) days from the date of the Notice of Intent to Award Contract, a prospective awardee shall submit to Hatboro a Subcontractor List containing the names of subcontractors that will be used for the referenced project, their addresses and a description of the work each listed subcontractor will perform on the project.

B. At the time a prospective awardee submits the Subcontractor List it shall also submit Subcontractor Responsibility Certifications for all listed subcontractors to Hatboro. Subcontractor Responsibility Certifications shall be executed by the respective subcontractors on forms prepared by Hatboro and shall contain the same information as representations required in Contractor Responsibility Certifications, including verification of apprenticeship qualifications as required by the above section 903.C, for each trade or classification of craft workers it will employ on the project.

C. Subcontractor Responsibility Certifications shall be executed by persons 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.

**§906 Contractor Responsibility Review and Determination.**

A. After a Notice of Intent to Award Contract has been issued, Hatboro shall undertake a review process for a period of at least thirty (30) days to determine whether the prospective awardee is a qualified, responsible contractor in accordance with the requirements of this section and other applicable laws and regulations and has the resources and capabilities to successfully perform the contract.

B. As part of this review process, Hatboro shall ensure that the Contractor Responsibility Certification, the Subcontractor List and the Subcontractor Responsibility Certification(s) as required by this section, have been submitted and properly executed.

C. Hatboro 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 Firm(s) have a sufficient record of law compliance and business integrity to justify the award of a public contract. In conducting such inquiries, Hatboro may seek relevant information from the Firm, its prior clients or customers, its subcontractors or any other relevant source.

D. If, at the conclusion of its internal review, Hatboro 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 written Contractor Responsibility Determination verifying that the prospective awardee is a qualified, responsible contractor. In the event a Firm is determined to be non-responsible, Hatboro shall advise the Firm of its finding in writing and proceed to conduct a responsibility review of the next lowest, responsive bidder or, if necessary, re-bid the project. Prior to the awarding of a contract the Borough must follow the procedures as set by §1402 of the Borough Code.

E. Hatboro shall not issue a written Contractor Responsibility Determination until at least ten (10) days after it determines that the contractor is a qualified responsible contractor in accordance with the requirements of this section. A written Contractor Responsibility Determination may be revoked or revised in any manner at any time if Hatboro obtains relevant information warranting such action.

**§907 Subcontractor Responsibility Review Requirements.**

A. A construction manager, general contractor, or other lead or prime contractor shall not be permitted to use a subcontractor on any work performed for Hatboro unless it has identified the subcontractor on its Subcontractor List and provided a Subcontractor Responsibility Certification in accordance with the requirements of Section 905 of this section.

B. A subcontractor listed on a Firm's Subcontractor List shall not be substituted unless written authorization is obtained from Hatboro and a Subcontractor Responsibility Certification is provided for the substitute subcontractor.

C. In the event that Hatboro determines that a prospective subcontractor listed by the apparent low bidder does not meet the responsibility standards of this section, 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 requirement of this section;
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.

D. In the event that a subcontractor is disqualified under this section, the general contractor, construction manager or other lead or prime contractor shall not be permitted to make any type of contractual claim against Hatboro on the basis of a subcontractor disqualification.

**§908 Public Review Process.**

A. The Contractor Responsibility Certification for a Firm identified in a Notice of Intent to Award Contract, Subcontractor Lists, and Subcontractor Responsibility Certifications shall be made immediately available to the public for inspection through a publicly accessible website or other comparable means.

B. During the Public Review Period, any person or organization may protest a contractor or subcontractor for failing to meet applicable requirements of this section or any other relevant grounds by submitting letter with supporting evidence to Hatboro.

C. If Hatboro determines that a Contractor 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 prohibited from performing work for Hatboro for a period of three (3) years and shall be subject to any other penalties and sanctions, including contract termination, available to Hatboro under law. A contract terminated under these circumstances shall further entitle Hatboro to withhold payment of any monies due to the Firm as damages.

D. A procurement contract subject to this section shall not be executed until all requirements of this section have been fulfilled and until Contractor and Subcontractor Responsibility Certifications and Subcontractor Lists have been made available for public inspection for at least ten (10) days following submission of such information.

#### **§909 Emergencies.**

Should Borough Council determine, in accordance with the provisions of Section 903, that emergency circumstances exist that render the requirements and procedures set forth in this section unduly burdensome, then in that event the Borough may award a procurement contract without application of the terms of this section.

### **SECTION 2. REPEALER.**

All Ordinances or parts of Ordinances inconsistent herewith or in conflict with any of the specific terms enacted hereby, to the extent of said inconsistencies or conflicts, are hereby specifically repealed. Additionally, the requirements of this Ordinance shall not apply to contracts executed prior to the effective date of this Ordinance, except that the exercise of an option on a contract covered by this Ordinance shall be deemed to create a new contract for purposes of this Ordinance.

### **SECTION 3. REVISIONS.**

Borough Council does hereby reserve the right, from time to time, to adopt modifications of, supplements to, or amendments of its Ordinance, including this provision.

### **SECTION 4. SEVERABILITY.**

The provisions of this Ordinance are declared to be severable. If any provision of this Ordinance is declared by a court of competent jurisdiction to be invalid, unenforceable, or unconstitutional, such determination shall have no effect on the remaining provisions of this Ordinance and all remaining provisions shall remain in full force and effect.

**SECTION 5. EFFECTIVE DATE.**

This ordinance shall be effective immediately upon its legal enactment by the Borough Council of the Borough of Hatboro.

Ordained and enacted, by the Borough Council Members of Hatboro Borough, Montgomery County, Pennsylvania, this 23<sup>rd</sup> day of September, 2019.

**ATTEST:**

**HATBORO BOROUGH COUNCIL**



By: Diane Hegele, Borough Manager



By: George Bollendorf, President

**APPROVED:**



By: Mayor Nancy Guenst