



**Township Council**  
1 Municipal Plaza  
Bloomfield, NJ 07003

**Louise M. Palagano**  
*Municipal Clerk*

<http://www.bloomfieldtwpnj.com>

Meeting: 03/25/19 07:00 PM

19-7

**2019 ORDINANCE AMENDMENT**

**AN ORDINANCE TO CREATE CHAPTER 149A, "PUBLIC CONSTRUCTION CONTRACTS, RESPONSIBLE BIDDER REQUIREMENTS" WITHIN THE TOWNSHIP OF BLOOMFIELD TOWN CODE**

**BE IT ORDAINED**, by the Mayor and Council of the Township of Bloomfield, County of Essex, State of New Jersey, as follows:

Section 1. Chapter 149A, "PUBLIC CONSTRUCTION CONTRACTS, RESPONSIBLE BIDDER REQUIREMENTS" of the Code of the Township of Bloomfield, County of Essex, State of New Jersey, is hereby amended by adding section §149 A-5 to read as follows:

**§149 A-5 Public Construction Contracts, Responsible Bidder Requirements**

**WHEREAS**, to protect its financial investments and its substantial proprietary interests as a market participant The Township of Bloomfield has a compelling interest in ensuring that all its contracts for Public Construction Projects that it undertakes for which it provides Financial Assistance are performed promptly, at reasonable costs and with the highest degree of quality by qualified reputable contractors and properly trained and skilled workers and for these reasons shall implement this Ordinance; and

**WHEREAS**, the requirements of this Ordinance are intended to supplement, not replace, existing contractor qualification and performance standards or criteria currently required by the Local Public Contracts Law N.J.S.A. 40A: 11-1 et seq., other contracting provisions as outlined herein or other legislative obligations; and

**WHEREAS**, in order to fulfill its obligations as outlined under N.J.S.A. 40A:11-1 and to ensure that contracts are awarded in an atmosphere that invites competition and guards against

favoritism, improvidence, arbitrary conduct, extravagance, fraud, corruption, and for the purpose of securing the best project work results possible at the lowest cost practicable; and

**WHEREAS**, The Township of Bloomfield pursuant to N.J.S.A. 40A:11-2 (32) possesses certain discretion in determining the "lowest responsible bidder" and is entitled to specify the terms of the contract when it solicits bids along with the criteria that bidders must meet in order to be considered a "responsible" bidder pursuant to N.J.S.A. 40A: 11-25 and in the exercise of its proprietary duties and responsibilities so as to ensure that bidders are qualified responsible firms that understand the unique challenges affecting construction project delivery including but not limited to selecting subcontractors who have developed a satisfactory record of past performance and adequate expertise, including a highly trained workforce and an established record of successfully performing work projects in a safe, timely, cost effective and professional manner; and

**WHEREAS**, The Township of Bloomfield solicits bids and/or proposals on many different types of construction contracts with varying factors affecting each procurement decision, and therefore must take into account the reasonable benefits arising from each bid and in the exercise of and in order to protect its proprietary interests due to the substantial taxpayer investments involved in the public construction project(s); and

**WHEREAS**, in order to protect its substantial proprietary interests The Township of Bloomfield has the inherent right to adopt procurement licensing and economic development regulations/Ordinances and so as to ensure and pursuant to N.J.S.A. 40A: 11-4 that the bidder has not had a prior negative experience and so as to impose bid specifications designed to ensure the performance capabilities of prospective bidders pursuant to N.J.S.A. 40A:11-25; and

**WHEREAS**, due to the magnitude of the bid threshold herein and in order to ensure the intended purpose of each of its work projects and that financial responsibility is an important

factor in determining the lowest responsible bidder for public construction projects for which it provides Financial Assistance, The Township of Bloomfield, through its contracting authority, shall require that every contractor and sub-contractor that bids on a public construction project contract produce satisfactory evidence that the contractor/sub-contractor is properly registered and authorized to conduct the type of work to be performed, including evidence that demonstrates that the entity possesses, complies with, and maintains such compliance with all valid licenses, registrations, ordinances and certificates required by the federal, state, and county laws, as well as complying with any general business license requirements of The Township of Bloomfield both prior to the award and during the term of the contract; and

**WHEREAS**, the Township of Bloomfield in order to make its determination as to whether the bidding entity is responsible, shall confirm and substantiate that the contract awardee(s) can reasonably be expected to complete and perform under the contract specifications, and the Township of Bloomfield pursuant to N.J.S.A. 40A: 11-20 thru 22 et seq. may require the successful bidder to post a bid performance and/or material bond(s) as well as the submission of documentation to verify that the successful bidder has secured any insurance requirements as required by applicable law and in conformance with said law, including general liability insurance, workers' compensation insurance and unemployment compensation insurance; and shall also determine if the successful bidder can reasonably be expected to complete the project within the time constraints as delineated in the request for bids and other procurement documents; and shall, through the submission of documents from the bidder(s) and pursuant to N.J.S.A. 40A: 11-20 through 11-22 determine if the bidding entity maintains a satisfactory level of past performance and integrity as well as possesses the financial, supervisory, personnel,

material, equipment, and other resources and expertise required to satisfactorily meet that entity's contractual responsibilities and obligations; and

**WHEREAS**, in its determination of whether a bidder is "responsible," and to avoid any risks to projects caused by unqualified firms or firms held to be considered unsafe, the Township of Bloomfield shall consider a bidder's record of conformity with environmental, labor and health and safety laws and regulations, including compliance with the requirements of the U.S. Department of Labor's Occupational Safety & Health Administration ("OSHA") and the New Jersey Department of Labor and Workforce Development. In order to ensure that its workforce is compliant with safe working procedures in order to protect the public, as well as, to ensure to the greatest extent possible that work site accidents, injuries, etc. are minimized shall affirm that any employee which will be assigned to the work project at a minimum has completed at least the 10 Hour Training Course for safety standards established by OSHA; and

**WHEREAS**, current challenges in the construction labor market relating to the supply of skilled craft personnel exacerbate normal construction industry challenges including those impacting project cost, quality of work, safety and scheduling parameters, which has been well documented by numerous industry sources both nationally and locally for over a decade, including Confronting the Skilled Workforce Shortage, Construction Users Roundtable (June 2004); The Perfect Storm: Factors Come Together Creating a Storm in the Construction Workforce, The Construction Executive (June 2004); America's Construction Industry: Identifying and Addressing Workforce Challenges, ETA/Business Relations Group Report (Dec. 2004); Craft Labor Supply Outlook: 2005-2015, Construction Labor Research Council (2004); 2013 U.S. Markets Construction Overview, FMI Corporation (2012); 2013 Dodge Construction Outlook, McGraw-Hill Construction Research & Analytics Group (Oct. 2012); Construction Users Roundtable, Skilled Labor Shortage Risk Mitigation; WP-110 I , January 2015; Pam

Hunter. Firms Anticipate More Worker Shortages Ahead, Engineering News Record, p. 13, February 9, 2018; and

**WHEREAS**, in addition to a growing demand and shrinking supply, one of the key factors driving and further compounding construction industry skill supply challenges has been the continuous decline in skill training in this industry generally over the past several decades, a fact documented by the U.S. Commerce Department; L. Huang, Robert E. Chapman, and David T. Butry, Metrics and Tools for Measuring Construction Productivity; Technical and Empirical Considerations, U.S. Department of Commerce, National Institute of Standards and Technology, Office of Applied Economics, p. 23 (Sept. 2009); and

**WHEREAS**, the growing need of meeting skilled labor demands and the general decline of a pool of trained workers produces conditions that increase the likelihood of contractors and subcontractors deploying unskilled, untrained workers to construction jobsites, including persons who receive little or no adequate safety training and, consequently, due to the inherent dangers that exist within the construction industry pose serious risks of injury to themselves, their coworkers and the general public, while also undermining important cost factors, as well as, the scheduling goals of capital projects; and

**WHEREAS**, leading organizations in the construction industry, including trade associations representing project owners such as the Construction Users Roundtable, have repeatedly issued strong recommendations to parties purchasing construction services for large capital projects that, due to persistent, acute labor supply challenges, contractors and subcontractors should be pre-qualified on the basis of craft labor training to protect the project owner's financial and proprietary interests by ensuring that such firms have an adequate supply of trained, skilled craft personnel to perform the project; Confronting the Skilled Workforce

Shortage, Construction Users Roundtable (June 2004); Construction Users Roundtable, Skilled Labor Shortage Risk Mitigation, WP-1101, January 2015; and

**WHEREAS**, in seeking to address and remediate issues of construction skill shortages and the problems they cause for the industry including safety risks, the United States Congress passed the Fitzgerald Act, Pub. L. No. 75-308, 560 Stat. 664, H.R. REP> No. 75-945 (the National Apprenticeship Act), which created a system in which workers could be properly trained in construction skills and safety procedures through registered, formal apprenticeship training programs that meet established qualification, safety and performance standards and that such programs registered and approved by the United States Department of Labor ("US DOL"), stresses the need to expand industry apprenticeship programs as a means of building the pool of skilled labor, especially in the construction industry, U.S. Dept's of Labor, Commerce, Educations, and Health and Human Resources, What Works in Job Training: A Synthesis Of the Evidence 8 (July 22, 2014); and

**WHEREAS**, the courts have recognized that states, counties and local jurisdictions acting to protect substantial proprietary interests, have the right to stop procurement, licensing and economic development legislation and/or to impose contract bid specifications designed to ensure the performance capabilities of all prospective bidders and their employees, including apprenticeship training requirements and other craft labor qualifications; see Bldg. & Const. Trades Council of the Metro. Dist. V: Assoc. Builders & Contractors of Mass.IR.I , Inc., 407 U.S. 218 (1993); Associates Builders & Contractors v. Mich. Dep 't of Labor & Econ. Growth, S43 F.3d 275 (6th Cir. 2008); Hotel Employees & Restaurant Emps. Union, Local 57 v. Sage Hospitality Res., LLC, 390 F2d 206 (3'd Cir. 2004); Associated Builders & Contractors, Inc., New Castle County - F. Supp. 3d, 2015 WL 7257916 (D. Del. Nov. 17, 2015); and

**WHEREAS**, due to the critical impact that skilled construction craft labor has on public construction projects due to the limited availability of skilled construction craft labor, as well as, potential imminent skill shortages, and most significantly due to the magnitude of the threshold amount herein and so as to insure that the work project be completed in a timely and safe manner in order to protect its proprietary interests and the interest of the taxpayer funding of such projects, it is necessary to require contractors and subcontractors to participate in established, formal apprenticeship training programs for the purpose of promoting successful, cost effective project delivery; and

**WHEREAS**, the most efficient means that bidders and their subcontractors' have in order to ensure a highly trained, safety conscious and skilled workforce, as well as, to provide for a safe project delivery is to require that bidders utilize an apprenticeship training program, registered with and approved by the US DOL, or any state agency having equal or higher requirements as the US DOL, for each separate apprenticeable occupation for which it employs employees in compliance with the performance standards of enrollment and graduation under 29 C.F.R. Part 29, 29.5 and 29.6. The bidder shall be further required to demonstrate and affirm in its Contractor Certification Form that it is in compliance with 29 C.F.R. 29 et al., as well as, the provisions of N.J.S.A. 34:20-1 et seq. the "Construction Industry Independent Contractor Act."; and

**WHEREAS**, as a condition of performing work on a public construction project and/or construction projects subject to this Ordinance all bidders pursuant to N.J.S.A. 40A:11-26 shall submit a completed Contractor Responsibility Certification provided by the Township of Bloomfield at the time the bidder submits its bid pursuant to N.J.S.A. 40:11-20 thru 27 et seq. Moreover and pursuant to N.J.S.A. 40:11-27, all bidders must respond to the Contractor Responsibility Certification under oath. In addition, all bidders shall further simultaneously

submit with its Contractor Responsibility Certification and pursuant to N.J .S.A. 40: 11-16(a) and (b) and N.J.S.A. 40:1 1 -23-2(d) a Subcontractor List containing the names of any proposed contractors required to be listed in the bid including the subcontractor' s address and a description of their work expertise; and

**WHEREAS**, should it be established, after awarding a contract that any of the information required by this Ordinance and provided by the bidding entity to Township of Bloomfield was falsified or inaccurate, the Bidder will be subject to the penalties as outlined under N.J. S.A. 40: 11-27 thru 34 et al., and the contract shall be voided; and

**WHEREAS**, the following definitions shall govern within this Ordinance:

"Public Construction Contract" shall mean any public construction project for the construction, reconstruction, demolition, alteration or renovation of buildings at the public expense, required to be bid under the Local Public Contracts Law, and which requires that workers be paid the prevailing wage determined by the Commissioner of Labor pursuant to the provisions of the applicable statutory language.

"Financial Assistance" shall mean something of economic value provided by Township of Bloomfield to a private entity, expressly articulated or identified in writing by the Township of Bloomfield, including, but not limited to real property, loans, loan guarantees, grants, tax exemptions, tax abatements, tax incentive financing, and rent subsidies or reductions approved, funded, authorized, administered or provided by the local government entity or any of its instruments in connection with construction.

#### Section 1. Purpose

Due to the magnitude of the threshold amount as stated herein, Township recognizes that there is a need to ensure that work on public works projects, maintenance work and contracts for

public works are performed by responsible, qualified firms that maintain the capacity, expertise, personnel, equipment and other qualifications and resources necessary to successfully perform public contracts in a timely, reliable and cost-effective manner.

To effectuate the purpose of selecting responsible contractors for public contracts and to protect the substantial taxpayer investments in such contracts, prospective contractors and subcontractors shall be required to meet pre-established, clearly defined, minimum standards relating to contractor responsibility, competency, experience, and the adequacy of resources.

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, it is necessary to require contractors and subcontractors to participate in bona fide apprenticeship training programs in the trades and classifications in which they employ construction craft personnel.

Therefore, the Township of Bloomfield shall require compliance with the provisions of this Ordinance by business entities seeking to provide services to Township of Bloomfield as specified herein. The requirements of this Ordinance are intended to supplement, not replace existing contract qualification 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 Ordinance conflicts with any law, public policy or contracting documents, or is held to be invalid and unenforceable by a court of competent jurisdiction, the remaining provisions shall remain in full force and effect.

(a) All contractors and subcontractors of any tier that perform work on projects valued at or above \$250,000.00, including any public works project, N.J.S.A. 40A:11-2(34), maintenance work, or contracts for public works, shall meet the requirements of this Ordinance.

(b) All firms engaged in contracts covered by this Ordinance shall be qualified, responsible contractors and subcontractors that have sufficient capabilities in all respects to successfully perform contracts on which they are engaged and will continue to have sufficient capability for the duration of the contract in question, including the necessary experience, equipment, technical skills and qualifications, as well as, the adequate organizational, financial and personnel resources necessary to perform the contract. Firms bidding on public contracts shall also be required to have a satisfactory past performance record and a satisfactory record of law compliance, business integrity and business ethics.

### Section 3. Contractor Responsibility Certification Requirements

(A) As a condition of performing work on a contract subject to this Ordinance, a general contractor, construction manager or contractor seeking the award of a contract shall submit a Contractor Responsibility Certification at the time it submits its bid for the contract work. The failure to submit the Contractor Responsibility Certification shall disqualify a contractor from performing the contract work.

(B) The Contractor Responsibility Certification shall be completed on a form provided by the contracting unit, as defined at N.J.S.A. 40A: 11-2(1), governing body, as defined at N.J.S.A. 40A: 11-2(2), or other procurement entity or agency, 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 Form the construction manager, general contractor or contractor shall confirm and verify its past performance and work history and its current qualifications and performance capabilities.

(D) In the Contractor Responsibility Certification Form the construction manager, general contractor or contractor will, pursuant to the obligation and criteria as set forth in N.J.S.A. 40A:11-16 and 40A:11-23.2(d) provide a list of its subcontractors.

(E) Notwithstanding, N.J.S.A. 4.0A:11-16 in the Contractor Responsibility Certification, the firm shall further provide Subcontractor Responsibility Certifications for all identified subcontractors within ten (10) days of receiving the Notice of Intent to Award Contract or within ten (10) days of being awarded a contract.

(F) In the Contractor Responsibility Certification Form, the firm shall attest to the following:

(a) The firm has not been disbarred or suspended by any federal, state or local government agency or authority in the past three years or has not defaulted on any project the past three years.

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

(c) The firm and its owners have not been convicted of any crime relating to the contracting business by a final decision of a court of law or government body in the past seven years.

(d) 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 with 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 \$3,000.00.

(e) The firm will utilize skilled workers who have successfully participated in and completed an apprenticeship program or other training program certified by the US DOL and in compliance with 29 C.F.R. 29. A questionnaire attached to the Contractor Certification Form will provide for the attestation of compliance.

(f) The firm shall notify the contracting unit, governing body, or other procurement entity or agency within seven days of any material changes to all matters attested to in this certification.

(g) The firm understands that the Contractor Responsibility Certification requirements 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.

(h) The Contractor and Subcontractor Responsibility Certification Forms attached hereto shall be used to verify that all bidders meet the requirements of this Ordinance.

(i) After a Notice of Intent to Award Contract has been issued, the Township of Bloomfield shall undertake a review process for a period of at least 3 (three) days to determine whether the prospective awardee is a qualified, responsible contractor in accordance with the requirements of this Ordinance and other applicable laws and regulations and has the resources and capabilities to successfully perform the contract.

(j) If Township of Bloomfield 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 the bidder shall be subject to the penalties as outlined under N.J.S.A. 40A:11-34.

(k) All Certification Forms will be available for public inspection through a publicly accessible website or other comparable means within thirty (30) days after a Notice of Intent to Award Contract has been issued.

(l) Township of Bloomfield 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

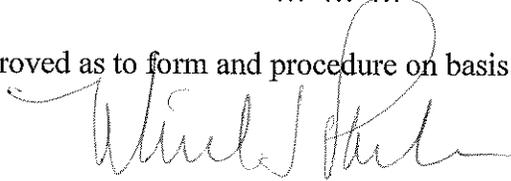
record of law compliance and business integrity to justify the award of a Public Construction Project Contract. In conducting such inquiries, the Township, may seek relevant information from the firm, its prior clients or customers, its subcontractors or any other relevant source.

(m) If at the conclusion of its internal review, the Township of Bloomfield determines that all responsibility certifications have been properly completed and executed and 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, the Township 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, rebid the project.

**NOW, THEREFORE, BE IT ORDAINED**, by the Mayor and Council that it hereby established and adopts the Responsible Contractor Ordinance and hereby authorizes the Mayor or his designee to sign any and all documents to effectuate the Ordinance

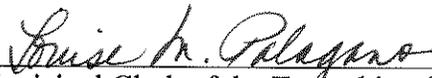
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Approved as to form and procedure on basis of facts set forth.

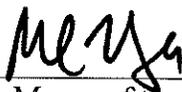


Director of Law-Township Attorney

I hereby certify that the above ordinance was duly adopted by the Mayor and Council of the Township of Bloomfield at a meeting of said Township Council held on *APRIL 29, 2019*.



Municipal Clerk of the Township of Bloomfield



Mayor of the Township of Bloomfield

✓ Vote Record - Ordinance							
<input type="checkbox"/> Adopt <input type="checkbox"/> Deny <input type="checkbox"/> Withdrawn <input type="checkbox"/> Table <input type="checkbox"/> Not Discussed <input type="checkbox"/> First Reading <input type="checkbox"/> Table with no Vote <input type="checkbox"/> Approve <input type="checkbox"/> Veto by Mayor <input type="checkbox"/> Discussion <input type="checkbox"/> Defeated <input type="checkbox"/> Discussion No Vote		Yes/Aye	No/Nay	Abstain	Absent		
	Jenny Mundell	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
	Nicholas Joanow	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
	Sarah Cruz	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
	Wartyna Davis	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
	Ted Gamble	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
	Richard Rockwell	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
	Michael J. Venezia	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		

✓ Vote Record - Ordinance							
<input type="checkbox"/> Adopt <input type="checkbox"/> Deny <input type="checkbox"/> Withdrawn <input type="checkbox"/> Table <input type="checkbox"/> Not Discussed <input type="checkbox"/> First Reading <input type="checkbox"/> Table with no Vote <input type="checkbox"/> Approve <input type="checkbox"/> Veto by Mayor <input type="checkbox"/> Discussion <input type="checkbox"/> Defeated <input type="checkbox"/> Discussion No Vote		Yes/Aye	No/Nay	Abstain	Absent		
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	Nicholas Joanow	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
	Sarah Cruz	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
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	Michael J. Venezia	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		