

**WARMINSTER TOWNSHIP**  
**BUCKS COUNTY, PENNSYLVANIA**

**ORDINANCE NO 729**

**AN ORDINANCE OF WARMINSTER TOWNSHIP, BUCKS COUNTY, COMMONWEALTH OF PENNSYLVANIA, PROVIDING FOR AMENDMENTS TO THE WARMINSTER TOWNSHIP RESPONSIBLE CONTRACTOR ORDINANCE; SPECIFICALLY PROVIDING FOR THE REPEAL AND REPLACEMENT OF ORDINANCE 680; PROVIDING FOR THE ADOPTION OF CERTAIN PROCEDURES RELATED TO THE SOLICITATION AND AWARD OF PUBLIC CONTRACTS WITHIN WARMINSTER TOWNSHIP; PROVIDING FOR CERTIFICATION REQUIREMENTS FOR PUBLIC CONTRACTORS; PROVIDING FOR CERTIFICATION REQUIREMENTS FOR SUBCONTRACTORS TO PUBLIC CONTRACTS; PROVIDING FOR PUBLIC CONTRACT REVIEW PROCESSES; REPEALING INCONSISTENT ORDINANCES OR PARTS OF ORDINANCES; CONTAINING A SAVINGS CLAUSE, AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the Board of Supervisors of Warminster Township is duly empowered by the Second Class Township Code to enact certain regulations relating to the public health safety and welfare of the citizens of the community of Warminster Township; and

**WHEREAS**, the Board of Supervisors previously enacted Ordinance 680 on January 15, 2009, known as the Responsible Contractor Ordinance, requiring certain certifications from contractors proposing to perform public contracts in the Township; and

**WHEREAS**, Council desires to repeal Ordinance 680 and to replace such provisions with new regulations governing the award of public contracts by the Township;

**NOW THEREFORE**, be it **ORDAINED** and **ENACTED**, by the Board of Supervisors of Warminster Township, Bucks County, Commonwealth of Pennsylvania, as follows:

**SECTION 1**

Ordinance 680 of Warminster Township is hereby **REPEALED** in its entirety and **REPLACED** with the following new provision:

**§1. Responsible Contractor Requirements**

- (a) All contractors and subcontractors of any tier that perform work valued at over \$350,000.00 on any public facility or public works project, including construction,

demolition, alteration, renovation, repair and contract service or contract maintenance work, shall meet the requirements of this ordinance.

- (b) All firms engaged in contracts covered by this ordinance 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.

## **§2. 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 at the time it submits its bid for a contract.
- (b) 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.
- (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 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 limited to, licenses, registrations or certificates for any type of construction or maintenance trade work or specialty work which the firm proposes to self-perform.
  - (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.
  - (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 other certification revoked or suspended in the past three years.

(6) The firm and its owners have not been convicted of any crime relating to the contracting business in the past ten years.

(7) 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.

(8) The firm will 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.

(9) All craft labor that will be employed by the firm for the project have completed at least the OSHA 10 hour training course for safety established by the U.S. Department of Labor, Occupational Safety & Health Administration.

(10) The firm will employ craft employees in all classifications and individual trades required to successfully perform the work related to this project.

(11) The firm participates in a Class A Apprenticeship Program for the past three years, at a minimum, 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 journeyman status for at least three of the past five years.

(B) 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.

(12) 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.

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

(14) The firm shall notify the Township within seven days of any material changes to all matters attested to in this certification.

(15) 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 ordinance 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 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.
- (e) 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 section 5 of this ordinance.
- (f) If the submitting firm has ever operated under another name or controls, 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 a separate statement 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.
- (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 the Township because of its refusal to accept a bid for failing to provide information required by this section.

### **§3. Notice of Intent to Award Contract**

- (a) After it has received bids for a project, the Township 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 opened and after the Board of Supervisors shall vote to authorize issuance of a Notice to the apparent low bidder. The Notice shall stipulate that the contract award is conditioned on the issuance of a written Contractor Responsibility Determination, as required by Section 5 and any other conditions determined appropriate by the Township.

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

- (a) Within five (5) days from the date of Notice of Intent to Award Contract, a prospective awardee shall submit to the Township a Subcontractor List containing the names of any 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 the Township. Subcontractor Responsibility Certifications shall 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 verification of apprenticeship qualifications as required by Section 2(c)(11), 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.

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

- (a) After a Notice of Intent to Award Contract has been issued, the Township shall undertake a review process 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. The time of the review process shall be as determined necessary by the Township, but in no event less than five (5) calendar days.
- (b) As part of this review process, the Township shall ensure that the Contractor Responsibility Certification, the Subcontractor List and the Subcontractor Responsibility Certifications, as required by this act, have been submitted and properly executed.
- (c) The 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.
- (d) If at the conclusion of the review process the Township 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 may issue a formal, 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 proceed to conduct a responsibility review of the next lowest, responsive bidder or, if necessary, re-bid the project.

- (e) A Contractor Responsibility Determination may be issued after the conclusion of the review process under Section 5(a). A Responsibility Determination may be revoked or revised in any manner at any time if the Township obtains relevant information warranting any such revocation or revisions.

#### **§6. 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 the Township unless it has identified the subcontractor on its Subcontractor List and provided a Subcontractor Responsibility Certification in accordance with the requirements of Section 4.
- (b) A subcontractor listed on a firm's Subcontractor List shall not be substituted unless written authorization is obtained from Township and a Subcontractor Responsibility Certification is provided for the substitute subcontractor.
- (c) In the event that the Township 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 requirements 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 ordinance, the general contractor, construction manager or other lead or prime contractor shall not be permitted to make any type of contractual claim against the Township on the basis of a subcontractor disqualification.

#### **§7. False or Misleading Responsibility Certifications**

- (a) If the Township 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 the Township for a period of

three years and shall be subject to any other penalties and sanctions, including contract termination, available to the Township under law. A contract terminated under these circumstances shall further entitle the Township to withhold payment of any monies due to the firm as damages.

**§8. Execution of Final Contract**

- (a) A contract subject to this ordinance shall not be executed until all requirements of this ordinance have been fulfilled and until Contractor and Subcontractor Responsibility Certifications have been issued by the Township under Section 5(d). Upon completion of all requirements under this ordinance, the Township may execute a final contract based upon the Notice of Intent approved by the Board of Supervisors without further Board action.
- (b) Prior to the execution of a final contract under this Section, the Township shall publicly post the Notice of Intent to Award, Contractor and Subcontractor Responsibility Certifications, Subcontractor Lists, and Contractor Responsibility Determination on the Township website for public inspection for a period of five (5) calendar days after the issuance of the Contractor Responsibility Determination.

**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**

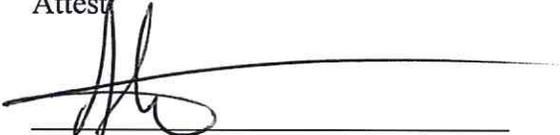
The terms, conditions and provisions of this Ordinance are hereby declared to be severable, and, should any portion, part or provision of this Ordinance be found by a court of competent jurisdiction to be invalid, enforceable or unconstitutional, the Council hereby declares its intent that the Ordinance shall have been enacted without regard to the invalid, enforceable, or unconstitutional portion, part or provision of this Ordinance.

**SECTION 4**

This Ordinance shall become effective in five (5) days.

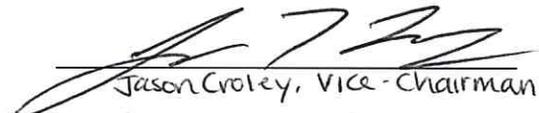
**ORDAINED AND ENACTED** by the Board of Supervisors of Warminster Township  
this 5<sup>th</sup> day of May, 2016.

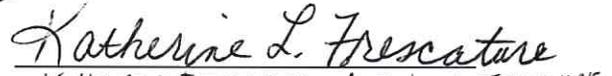
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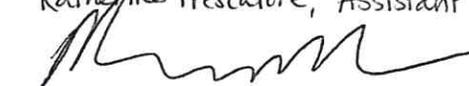
  
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Township Manager

BOARD OF SUPERVISORS:

  
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Katherine Frescatore, Assistant Treasurer

  
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