

ORDINANCE NO. 2025-02

AN ORDINANCE OF THE BOARD OF SUPERVISORS OF NEW BRITAIN TOWNSHIP PROVIDING FOR THE ADOPTION OF CERTAIN PROCEDURES RELATED TO THE SOLICITATION AND AWARD OF PUBLIC CONTRACTS; PROVIDING FOR CERTIFICATION REQUIREMENTS FOR PUBLIC CONTRACTORS AND SUBCONTRACTORS FOR PUBLIC CONTRACTS; PROVIDING FOR PUBLIC CONTRACT REVIEW PROCEDURES; PROVIDING FOR ASSURANCE ON THE USE OF PROPERLY TRAINED CONSTRUCTION PERSONNEL

WHEREAS, New Britain Township (“Township”) is empowered to enact certain requirements needed to protect its proprietary and financial interests relating to major capital investments it makes in public works projects, as well as those relating to the public health, safety, and welfare of its customers; and

WHEREAS, the Township has particular concerns regarding the challenges it faces in planning and executing public works projects, especially those relating to its ability to ensure the use of properly qualified contractors and subcontractors and adequate numbers of craft personnel who have industry recognized training in the respective skills and trades needed for future projects; and

WHEREAS, the Township recognizes the need to address the above-referenced challenges through appropriate procurement legislation as embodied in this Ordinance;

NOW, THEREFORE, BE IT ORDAINED AND ENACTED by the Township, the following requirements are adopted for public works contracts as specified herein;

Section 1. Purpose.

The Township recognizes 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.

To effectuate the purpose of selecting responsible contractors for public contracts and to protect the Township’s proprietary investments in such contracts, prospective contractors and sub- contractors, should be required to meet pre-established, clearly defined minimum standards relating to contractor responsibility, particularly requirements concerning technical qualifications, competency, experience, adequacy of resources, including equipment, financial and personnel, and satisfactory records of past performance in terms of safety, law compliance and business integrity.

It is also critical to recognize that due to the substantial impact that skilled 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 and performing work, for the purpose of both promoting successful project delivery and ensuring future workforce development needed for future projects.

Therefore, the Township shall require compliance with the provisions of this Ordinance by business entities seeking to provide services to the Township as specified herein. The requirements of this Ordinance are intended to supplement, not replace, existing contractor 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 conflict with any law, public policy or contracting documents of the Township, this Ordinance shall prevail, unless legally prohibited from doing so.

Section 2. Responsible Contractor Requirements.

- a. This Ordinance shall apply to all public works projects undertaken by the Township for construction, demolition, alteration, renovation, repair, service and maintenance work valued at or above \$500,000.00 annually and shall apply to all contractors and subcontractors at any tier on such projects. Beginning in January 2029 and then every third year thereafter, the Board of Supervisors shall review any changes in economic conditions and modify this threshold as the Board of Supervisors determines to be necessary.
- 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 record of past performance, law compliance and business ethics.

Section 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. Subcontractors used on the contract are likewise required to provide similar Subcontractor Responsibility Certifications as provided by Section 5 of this Ordinance.
- 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, other lead or prime contractor or subcontractor shall confirm the following facts regarding its past performance and work history and its current qualifications and performance capabilities:

- i. The firm and its employees have all valid, effective licenses, registrations, certificates, or other credentials required by federal, state, Township, 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.
- ii. The firm meets the bonding requirements for the contract, as required by applicable law or contract specifications, as well as applicable insurance requirements for the contract including general liability insurance, workers compensation insurance and unemployment insurance.
- iii. The firm has not been debarred or suspended by any federal, state, or local government agency or Township in the past three years.
- iv. The firm has not defaulted on any project in the past three years.
- v. 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.
- vi. The firm and its Principals/owners have not been convicted of any crime relating to its contracting business in the past ten years.
- vii. 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, 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 \$5,000 or more.
- viii. The firm will employ a sufficient number of craft labor personnel 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 craft or trade for which they have sufficient skills and training or shall use qualified subcontractors to meet this requirement.
- ix. The firm will pay all craft employees on the project, at a minimum, the applicable wage and fringe benefit rates, as established for the classification in which the worker is employed, in accordance with 43 PA. CONS. STAT. § 165-1 *et seq.* These wages shall also be paid to employees performing any custom fabrication work for the project. For purposes of this subsection, custom fabrication shall mean the fabrication, assembly modification or other production of non-standard goods, or materials, including components, fixtures, or parts thereof, that are fabricated assembled or modified offsite, but produced specifically for a project covered by this Ordinance. This requirement shall include, but not be limited to custom fabrication for electrical, plumbing, mechanical, refrigeration, heating, cooling, ventilation, sheet metal or other duct systems, mechanical insulation, ornamental iron work or boiler systems. Fabrication shall also include the fabrication, assembly or other production of

components or structures prefabricated to specifications for a particular project covered by this Ordinance.

- x. The firm will ensure that all craft labor it employs on the project complete, prior to working on the project, the OSHA 10-hour training course for safety established by the U.S. Department of Labor. If the firm is a prime contractor, it shall also ensure that at least one person on the project has completed the OSHA 30-hour construction training course established by the U.S. Department of Labor.
- xi. The firm participates in a Class A Apprenticeship Training Program, as defined below, for each separate trade or classification in which it employs craft employees.
 - 1. For purposes of this Ordinance, a Class A Apprenticeship Program is an apprenticeship program registered with and approved by the U.S. Department of Labor or a state apprenticeship agency and has graduated apprentices to journey person status for at least three of the past five years. This may be an apprenticeship program subject to the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001 *et seq.* ("ERISA"), or a non-ERISA program.
 - 2. To demonstrate compliance with this Ordinance, 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.
 - 3. The requirements of this Section of the Ordinance help ensure that the bulk of the craft labor workforce employed on the project will have sufficient skills and training to correctly perform work assigned to them.
- xii. The firm shall assign craft labor personnel to work only in the craft or trade in which they are employed.
- xiii. 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 through the use of qualified, responsible subcontractors or vendors.
- xiv. The firm shall notify the Township within seven days of any material changes in its operation that related to any matter attested to in this certification.
- xv. The firm understands that the Contractor Responsibility Certification required by this Ordinance 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 information regarding the firm's 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 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.
- g. If a firm fails to provide a Contractor Responsibility Certification required by this Ordinance, 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 this reason.

Section 4. 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 responsible bid.
- b. Such Notice shall be issued immediately or as soon as practicable after bids are opened and Notice of Intent to Award Contract. The Notice shall stipulate that the contract award is conditioned upon compliance with this Ordinance, the issuance of a written contractor responsibility determination and any other conditions deemed appropriate by the Township.

Section 5. Subcontractor Responsibility Requirements.

- a. Within seven (7) days of receiving a Notice of Intent to Award Contract, the prospective awardee shall submit to the Township a Subcontractor List, which provides the name and address of the subcontractors it will use on the project, the scope of the work assigned to each subcontractor, and Subcontractor Responsibility Certifications as required by this Ordinance.
- b. The prospective awardee 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 3 above.
- c. At the time a perspective awardee submits the Subcontractor List it shall also submit Subcontractor Responsibility Certifications and applicable supporting information 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, representations, and supporting information required in Contractor Responsibility Certifications, including verification of apprenticeship qualifications as required by Section 3(c)(xi), for each trade or classification of craft workers it will employ on the project.

- d. 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 it is required to maintain in order to do business in the state in which it is located.
- e. A subcontractor listed on a firm's Subcontractor List shall not be substituted unless written authorization is obtained from the Township and a Subcontractor Responsibility Certification is provided for the substitute subcontractor.
- f. In the event that the Township 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:
 - i. Permit the awardee to substitute a qualified, responsible subcontractor in accordance with the requirements of this Ordinance, upon submission of a completed Subcontractor Certification for the substitute and approval of the substitute by the Township.
 - ii. 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
 - iii. Disqualify the prospective awardee.
- g. 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 the Township based on a subcontractor disqualification.

Section 6. 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 shall be 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 Ordinance, have been submitted, properly executed and the contractors and subcontractors have provided the necessary documentation to support their Contractor Responsibility Certifications.

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, rebid the project.

e. A Contractor Responsibility Determination may be issued after the conclusion of the review process under this Section. 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.

f. In the event none of the firms that bid on the Project meet the requirements of this Ordinance, the Project will be bid a second time. After the second bid, if none of the firms meet the requirements, the provisions of this Ordinance are waived and the Board of Supervisors may proceed with the award of the contract from the second round of bids.

Section 7. False or Misleading Contractor Responsibility Certifications.

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 (3) 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.

Section 8. 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 Contractor and Subcontractor Responsibility Certifications have been issued by the Township under Section 6(d). Upon completion of all requirements under this Ordinance, the Township may execute a final contract based upon the Notice of Intent.

Section 9. Repealer.

Any and all other Ordinances or parts of Ordinances in violation of or in conflict with the terms, conditions and provisions of this Ordinance are hereby repealed to the extent of such irreconcilable conflict.

Section 10. Severability.

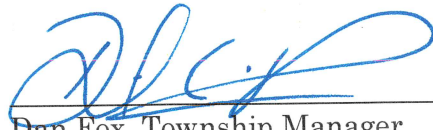
The terms, conditions and provisions of this Ordinance are hereby declared to be severable, and, should any portion, part or provision of this Ordinance be found by a court of competent jurisdiction to be invalid, enforceable or unconstitutional, the Board of Directors hereby declares its intent that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

Section 11. Effective Date.

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

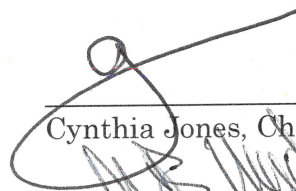
ENACTED by the Board of Supervisors of New Britain Township this the 21 day of July, 2025.

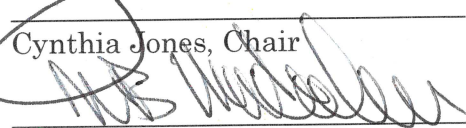
ATTEST:



Dan Fox, Township Manager

NEW BRITAIN TOWNSHIP

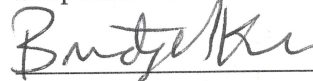


Cynthia Jones, Chair


MaryBeth McCabe, Vice-Chair

William B. Jones, III

Stephanie Shortall



Bridget Kunakorn