

Introduced by: Mr. Hollins
Mr. Smiley
Mr. Powers
Date of introduction: March 28, 2017

**ORDINANCE NO. 17- 021, AS AMENDED
BY AMENDMENT NOS. 1 AND 3**

**TO AMEND *NEW CASTLE COUNTY CODE*
CHAPTER 2 (“ADMINISTRATION”),
ARTICLE 5 (“DEPARTMENTS AND OFFICES”), SECTION 2.05.303
 (“PURCHASING OF CONTRACT CONSTRUCTION”), REGARDING THE
REQUIREMENTS FOR SPECIAL SERVICES CONTRACT CONSTRUCTION BIDS**

WHEREAS, New Castle County Council enacted law (Substitute No. 1 to Ordinance No. 06-117 as amended) to establish responsible contractor principles to ensure that all bidders and subcontractors on Special Services construction contracts expected to exceed a set dollar amount meet certain responsibility and qualification requirements; and

WHEREAS, in enacting the above-referenced law, New Castle County Council recognized the need for construction projects to be completed in a timely, reliable and cost-effective manner; and

WHEREAS, currently the threshold for these requirements is \$100,000 for Contractor Responsibility Certifications and \$50,000 for Subcontractor Responsibility Certifications; and

WHEREAS, these amounts have not been raised since enactment of the legislation more than ten years ago, despite inflation; and

WHEREAS, these requirements (including apprenticeship program requirements) apply to all trades, even those for which the State of Delaware Department of Labor does not have a registered apprenticeship program; and

WHEREAS, although well intentioned, the current requirements are stringent and preclude many local, small, disadvantaged, female, and minority businesses from even competing for these contracts and subcontracts, which reduces the amount of bids received by the County, in turn creating the potential for artificially high construction costs; and

WHEREAS, raising the thresholds and applying these requirements to the trades most likely able to comply will promote broader competition for County construction contracts and subcontracts while maintaining the more stringent responsible contractor and subcontractor requirements for very large construction projects.

NOW, THEREFORE, THE COUNTY OF NEW CASTLE HEREBY ORDAINS:

Section 1. *New Castle County Code* Chapter 2 (“Administration”), Article 5 (“Departments and Offices”), Division 2.05.300 (“Department of Special Services”), Section 2.05.303 (“Purchasing of contract construction”), is hereby amended by adding the material that is underscored and deleting the material that is stricken, as set forth below.

Sec. 2.05.303. Purchasing of contract construction...

D. Procedures...

3. Qualifying bidders.

- a. The County or a using agency or a county agency shall require any person proposing to bid ~~to it~~ on a special services contract, as a condition to submitting a bid to it for consideration, to submit to the Office of Administrative Services a Contractor Responsibility Certification for contracts where the probable cost of the contract is expected to exceed ~~one~~ five hundred thousand dollars (\$500,000.00). Only bids approved by the Office of Administrative Services as meeting all requirements for Contractor Responsibility Certification may be considered by the County or a using agency or a County agency. Such Contractor Responsibility Certification shall include, at a minimum, the following:
 - i. Name and address (city or town and state only; street number and P.O. Box addresses not required) and the contract or project number of the project for which a bid or proposal is being submitted...
 - viii. ~~Certification that, In the event the bidder employs any of the following craft workers on the special services contract: carpenters, electricians, elevator constructors, boilermakers, insulators, iron workers, laborers, plumbers, sheet metal workers, sprinkler fitters, bricklayers, operating engineers or millwrights, for each trade or classification in which the bidder will employ craft workers for the special services contract,~~ certification that the bidder:
 - (a) participates in a Class A Apprenticeship Program; or
 - (b) participates in an apprenticeship program that has been approved by the U.S. Department of Labor or a State apprenticeship agency within the past three (3) years; or
 - (c) commits that, at the time the bidder executes the special services contract, it will be participating in an apprenticeship program that has been approved by the U.S. Department of Labor or a state apprenticeship agency...
 - x. Certification that the bidder will produce, within fourteen (14) days following the date that the Office of Administrative Services identifies it as the apparent low bidder, a list of subcontractors it will use in the performance of the special services contract, a brief description of their scope of work, and completed and executed copies of Subcontractor Responsibility Certifications for the identified subcontractors containing information equivalent to that required for the bidder in the Contractor Responsibility Certification. This subsection shall apply only to subcontractors with subcontracts of ~~fifty~~ five hundred thousand dollars (\$500,000.00) or more...

- f. If the Office of Administrative Services receives no qualifying bids in response to its initial invitation to bid for a contract, the invitation shall be amended to exclude the certification requirement set forth in subsection 2.05.303.D.3.a.viii.
- g. The award of a special services contract is contingent upon the Office of Administrative Services receiving documentation from bidder verifying compliance with Sections 2.05.303.D.3.a.i.-xii. The Office of Administrative Services shall contact the agency or group administering bidder's apprenticeship program to further verify participation.
- h. Any contractor who is awarded a special services contract that was subject to the certification requirement found in subsection 2.05.303.D.3.a.viii. must maintain participation in its apprenticeship program until the Department of Special Services issues conditional acceptance of the work unless the contractor graduates an apprentice from the program prior to completion of the special services contract or there is an unforeseeable circumstance that arises through no fault of the contractor. Upon completion of the contractor's work under the special services contract, the contractor must provide the Office of Administrative Services with a verification that it continued to participate in its apprenticeship program until the issuance of conditional acceptance of the work by the Department of Special Services. In the event the contractor is awarded a special services contract but cannot provide verification that it maintained participation in its apprenticeship program for the duration of the contract, the contractor shall be disqualified by the Office of Administrative Services from bidding on any special services contracts for six (6) months from the date the Office of Administrative Services determined that the contractor had failed to maintain participation in such program.

...

- 5. *Opening of bids; award of special services contracts; right to reject bids; licenses required at time of award; mistakes, omissions and errors in preparation of bids.*
 - a. All bids submitted in response to written advertisements in accordance with the competitive bidding provisions of this Section shall be publicly opened in the County at the time and place stated in the advertisements...
 - f. If the Office of Administrative Services determines that a Contractor or Subcontractor Qualification Certification, or any other documentation or information submitted by the bidder, contains false or misleading material information that was provided knowingly or with reckless disregard for the truth, or omits material information that was omitted knowingly or with reckless disregard of the truth, the firm for which the certification was submitted shall be prohibited from performing work for the County for a

period of up to five (5) years, and shall be further subject to any other penalties and sanctions, including contract termination, available to the County under law. A contract terminated under these circumstances shall further entitle the County to withhold payment of any monies due to the firm as liquidated damages.

- g. To ensure compliance on special services contracts with equal employment opportunity laws and policies, and other County contracting laws and policies, the Office of Administrative Services shall monitor such contracts and prepare ~~an annual~~ a quarterly report to County Council that indicates the percentages of minority, ~~and women~~, apprentice and in-state workers employed on special services contracts. The quarterly report will be based on information submitted by the contractor in a format defined by the Office of Administrative Services at the time of Request for Bids and will include all active special services contracts. The report shall be considered a public document.

Section 2. This ordinance shall become effective upon passage by New Castle County Council and approval of the County Executive, or as otherwise provided by 9 Del. C. Section 1156.

Adopted by County Council of
New Castle County on: 6/13/17

President of County Council
of New Castle County

Approved on:

County Executive
New Castle County

SYNOPSIS: This Ordinance raises the thresholds required for Responsible Contractor and Subcontractor Certifications for Special Services contract construction projects. In addition, the apprenticeship requirement set forth within these certifications has been revised to apply only to trades and classifications that have approved apprenticeship programs in Delaware. These revisions are being made in order to open competition to a broader range of bidders, particularly local, small, disadvantaged, minority and female-owned businesses and to reduce construction project costs to the County. This change also is intended to contribute to the growth of small business in the County, essential to economic vitality.

FISCAL NOTE: Based on the current fiscal year capital spending for projects that are subject to the apprenticeship requirement, the costs for those projects under the attached proposed legislation would have resulted in a reduction of capital spending of between \$2,000,000 to \$5,050,000.