

ORDINANCE NO. 04 - 2022
BOROUGH OF WEST CHESTER
CHESTER COUNTY, PENNSYLVANIA

AN ORDINANCE OF THE BOROUGH OF WEST CHESTER, PROVIDING FOR THE ADOPTION OF CERTAIN PROCEDURES RELATED TO THE SOLICITATION AND AWARD OF PUBLIC CONTRACTS WITHIN THE BOROUGH OF WEST CHESTER PROVIDING FOR CERTIFICATION REQUIREMENTS FOR PUBLIC CONTRACTORS; PROVIDING FOR CERTIFICATION REQUIREMENTS FOR SUBCONTRACTORS ON PUBLIC CONTRACTS; PROVIDING FOR PUBLIC CONTRACT REVIEW PROCEDURES; REPEALING INCONSISTENT ORDINANCES OR PARTS OF ORDINANCES; CONTAINING A SAVINGS CLAUSE AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS the Borough of West Chester (the “Borough”) is duly empowered to enact certain laws needed to protect its proprietary and financial interests relating to major capital investments it makes in public works contracts, and to protect the public health, safety and welfare of its residents; and

WHEREAS the Borough has significant concerns regarding the challenges it faces in planning and executing public works construction and maintenance projects, especially those relating to its ability to ensure the use of qualified contractors and subcontractors and adequate numbers of skilled craft personnel who have industry-recognized training in the respective trades needed for public works projects; and

WHEREAS the Borough hereby adopts Resolution 1 (*see* Exhibit A attached hereto), which identifies in detail the formidable challenges summarized above and resolves to address these challenges through appropriate procurement and contracting reforms set forth in this ordinance, and wishes to incorporate the terms of this Resolution in their entirety as material terms of this ordinance; and

NOW, THEREFORE, BE IT ORDAINED AND ENACTED that Borough of West Chester, hereby adopts the following contractor qualification standards, procedures and related requirements for public works contracts as specified herein:

SECTION 1

§1. Purpose

The Borough 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 such contracts in a timely, reliable and cost-effective manner.

To effectuate the purpose of selecting responsible contractors for these public contracts and to protect the Borough’s investments in such contracts, prospective contractors and sub-contractors

should be required to meet pre-established, clearly defined, minimum qualification standards regarding past project performance in terms of competency, safety and law compliance, technical abilities, experience, and adequacy of resources.

Further, due to the critical impact that skilled craft labor has on the execution of public works projects, and the increasingly limited availability of such labor, it is necessary to require contractors and subcontractors to participate in proven apprenticeship training programs as a condition of bidding to promote successful project delivery and help ensure future workforce development.

Therefore, the Borough shall require compliance with the provisions of this ordinance by business entities seeking to provide services as specified herein. The requirements of this ordinance are intended to supplement, not replace, existing contractor qualification standards or other criteria currently required by the **Borough of West Chester**. However, in the event that this ordinance conflicts with any law, public policy or contracting documents of the **Borough of West Chester**, the requirements of this ordinance shall prevail.

§2. Responsible Contractor Requirements

- (a) This ordinance shall apply to public works projects undertaken by the Borough for construction, demolition, alteration, renovation, modernization, service or maintenance of buildings, structures or facilities valued at \$250,000 or more. All contractors and subcontractors of any tier that perform work on such projects, regardless of value of individual contract or subcontract packages shall meet the requirements of this ordinance.
- (b) All firms engaged in public works contracts subject to this ordinance, including general contractors, construction managers, other lead or prime contractors, and subcontractors at any level, shall be qualified, responsible contracting firms 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 or otherwise participating in public works contracts shall also be required to have a satisfactory past performance record and a satisfactory record of law compliance, integrity and business ethics.

§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.
- (b) The Contractor Responsibility Certification shall be completed on a form provided by the Borough and 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 licenses, registrations, certificates or other credentials required by federal and state law and the laws of the Borough with respect to the contract work it seeks to self-perform.
- (2) The firm meets the bonding requirements for the contract required by law or contract specifications, as well as applicable insurance requirements for the contract, including general liability, workers compensation 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 certification revoked or suspended in the past three years.
- (6) The firm and its principals/owners have not been convicted of any crime relating to its contracting business in the past ten years.
- (7) 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, 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.
- (8) 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.
- (9) 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 the Pennsylvania Prevailing Wage Act, 43 P.S. §§ 165-1 – 165-17 or the Federal Davis Bacon Act, 40 U.S.C. § 276a *et. seq.*, as applicable.
- (10) The firm will ensure that all craft labor it employs on the project will have completed, 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.
- (11) The firm participates in an 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 an apprenticeship program must be currently registered with and approved by the US Department of Labor or a state apprenticeship agency

and has graduated apprentices to journeyperson status for at least three (3) of the past (5) years, or every year since the firm's establishment.

- 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 the Borough, to verify it meets the requirements of this section for each trade classification of craft workers it will employ on the project. This verification shall be provided prior to performance of work by the firm.
- (12) The construction manager, general contractor or other lead or prime contractor responsible for the project shall ensure that at least 70 percent of the craft labor workers employed on the project shall be comprised of either journey-person workers who have successfully completed an Apprenticeship Program as defined in Section 3(c)11 of this ordinance or apprentices registered in such programs. The apprenticeship participation as specified by this section must be in the same trade or craft for which the workers are employed on the project.
- (13) The firm shall assign craft labor personnel only work in the craft or trade in which they are employed.
- (14) 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.
- (15) The firm shall notify the Borough within seven days of any material changes in its operation that relate to any matter attested to in this certification.
- (d) Execution of the Contractor Responsibility Certification required by this ordinance shall not establish a presumption of contractor responsibility, and the Borough 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 Borough 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 section, it shall be disqualified from bidding. No action of any nature shall lie against the Borough because of its refusal to accept a bid for this reason.

§4. Notice of Intent to Award Contract

- (a) After it has received bids for a project, the Borough shall issue a Notice of Intent to Award Contract to the firm that has submitted the lowest responsive bid.
- (b) Such Notice shall be issued immediately or as soon as practicable after bids are opened and shall stipulate that the contract award is conditioned on the issuance of a written Contractor Responsibility Determination for the firm as required by Section 6 of this ordinance, compliance with Subcontractor Certifications required by Section 5 of this ordinance, and any other qualification standards required by the Borough.

§5. Subcontractor Responsibility Requirements

- (a) Within fourteen (14) days of receiving a Notice of Intent to Award Contract, the prospective awardee shall submit a Subcontractor List, which provides the name and address of the subcontractors it will use on the project, the scope of work assigned to each subcontractor, and Subcontractor Responsibility Certifications as required by this section.
- (b) The prospective awardee shall not be permitted to use a subcontractor on any work performed for the Borough unless it has identified the subcontractor on its Subcontractor List and provided a Subcontractor Responsibility Certification in accordance with the requirements of Section 5.
- (c) At the time a prospective awardee submits the Subcontractor List it shall also submit Subcontractor Responsibility Certifications and applicable supporting information for all listed subcontractors to the Borough.
- (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 to do business in the state in which it is located.
- (e) Subcontractor Responsibility Certifications shall be executed by the respective subcontractors on forms prepared by the Borough and contain the same information, representations and supporting information required in Contractor Responsibility Certifications, including verification of apprenticeship qualifications required by Section 3(c)(11) for each trade or classification of craft workers it will employ on the project.
- (f) Subcontractor Responsibility Certifications shall be executed by a person 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.

- (g) A subcontractor listed on a firm's Subcontractor List shall not be substituted unless written authorization is obtained from the Borough and a Subcontractor Responsibility Certification is provided for the substitute subcontractor.
- (h) In the event that the Borough 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:
 - (1) Permit the awardee to substitute a qualified, responsible subcontractor in accordance with the requirements of this section, upon submission of a completed Subcontractor Certification for the substitute and approval of the substitute by the Borough.
 - (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.
- (i) 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 Borough on the basis of a subcontractor disqualification.

§6. Contractor Responsibility Review and Determination

- (a) After the Borough has issued a Notice of Intent to Award Contract to the lowest responsive bidder, it shall undertake a contractor responsibility review process to determine whether the firm is a qualified, responsible firm in accordance with the requirements of this ordinance and other applicable laws and regulations. The time frame for conducting this review process shall be as determined by the Borough.
- (b) As part of the review process, the Borough shall ensure that the Contractor Responsibility Certification and Subcontractor Responsibility Certifications and applicable supporting information comply with the requirements of this ordinance.
- (c) The Borough 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 Borough may seek relevant information from the firm, its prior clients or customers, its subcontractors or any other relevant source.
- (d) After the Borough determines that all responsibility certifications have been properly executed and has verified that all other relevant information requested for reviews indicates that the prospective awardee and its subcontractors are qualified, responsible firms, it shall issue a written Contractor Responsibility Determination for the prospective awardee.
- (e) In the event a firm is determined to be non-responsible, the Borough shall notify the firm and proceed to conduct a responsibility review of the next lowest, responsive bidder or, if necessary, rebid the project. A Responsibility Determination may be revoked at any time if the Borough obtains relevant information warranting any such revocations.

§7. 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 a Contractor Responsibility Determination has been issued by the Borough pursuant to Section 6.
- (b) Prior to the execution of a final contract under this Section, the Borough shall publicly post the Notice of Intent to Award, Contractor and Subcontractor Responsibility Certifications, Subcontractor Lists, related supporting documentation and the Contractor Responsibility Determination on a publicly available website for public inspection for a period of ten (10) calendar days after the issuance of the Contractor Responsibility Determination.

§8. False, Incomplete or Misleading Responsibility Certifications

If the Borough determines that a Contractor Certification, Subcontractor List or Subcontractor Responsibility Certification contains false or misleading 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 disqualified from the project and shall be prohibited from performing work for the Borough for a period of three years. The Borough may withhold payment of any monies due to the firm as damages and impose other applicable penalties and sanctions, including contract termination, as permitted by law or contract.

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, unenforceable or unconstitutional, Borough Council hereby declares its intent that the ordinance shall have been enacted without regard to the invalid, unenforceable or unconstitutional portion, part or provision of this ordinance.

SECTION 4

This ordinance shall become effective thirty one (31) days after enactment.


ENACTED AND ORDAINED THIS 14th DAY OF JUNE 2022.

ATTEST:



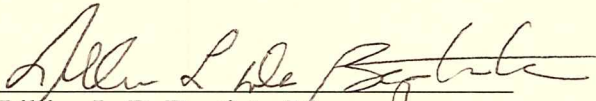
Sean Metrick, Secretary

**COUNCIL FOR THE BOROUGH
OF WEST CHESTER**

By: 

Michael Stefano, President

APPROVED THIS 14TH DAY OF JUNE, 2022.



Lillian L. DeBaptiste, Mayor

RESOLUTION NO. 10 - 2022

**BOROUGH OF WEST CHESTER
CHESTER COUNTY, PENNSYLVANIA**

**AN RESOLUTION OF THE BOROUGH OF WEST CHESTER REGARDING
PROCUREMENT REGULATIONS FOR PUBLIC WORKS PROJECTS
AND CONTRACTS.**

WHEREAS pursuant to the Administrative Code of the Borough of West Chester and state competitive bidding law requires that most public works contracts be awarded to the lowest “*responsible*” bidder; and

WHEREAS notwithstanding the importance of the “*responsible*” bidder requirement, there is very limited guidance for defining the term “*responsible*” in relevant statutes, regulations or case law, and, therefore, prudent procurement and contracting policy dictates that this term should be more specifically defined; and in doing so, available guidance regarding the general meaning of the “*responsible*” contractor term should be followed, which typically relates to the technical qualifications and other capabilities relating to a contractor’s ability to successful delivery public works projects. *See e.g., Sidelines Tree Service, LLC v Department of Transportation*, 266 A.3d 1214 (Pa. Cmwlt. 2021) and the citations therein; and

WHEREAS many states and local jurisdictions in the U.S. face critical contracting needs now and in the future, including those for public works and infrastructure projects, that will require significant efforts to plan, manage and oversee major capital investments in both the short and long term; *see* PRESIDENT’S COUNCIL OF ECON. ADVISORS, ECONOMIC BENEFITS AND IMPACTS OF EXPANDED INFRASTRUCTURE INVESTMENT 3 (2018)(estimating \$4.6 trillion in infrastructure investment is needed between 2016 and 2025); and

WHEREAS in undertaking its infrastructure and other public works projects, the Borough of West Chester (“the Borough”) seeks to utilize reliable and efficient procurement procedures that will help ensure that such projects are delivered with reasonable certainty, in a safe, timely manner, and in accordance with contract specifications and applicable industry codes at the lowest overall cost and best value; and

WHEREAS securing successful delivery of projects in the construction industry is particularly difficult due to the unique, complex, unpredictable and inherently dangerous nature of the industry, wherein errors in project planning or execution can result in serious health and safety risks to project workers and/or the general public, significant and avoidable cost overruns, flawed or inferior projects, and disruptions in performance schedules that delay the availability and use of critical government facilities; MAUREEN CONWAY & ALLISON GERBER, ASPEN INST., WORKFORCE STRATEGIES INITIATIVE, CONSTRUCTION PRE-APPRENTICESHIP PROGRAMS: RESULTS FROM A NATIONAL SURVEY 6-7 (2009)(discussing complicating factors in successful delivery of construction projects and the risks of using poorly trained workers); and

WHEREAS to protect its financial and proprietary interests in these projects, and to offset performance risks inherent to public works contracting, the Borough must utilize efficient procurement procedures that adequately protect and promote these interests, including clearly defined, pre-established evaluation criteria to address the unique challenges of capital construction and to result in the selection of qualified, reputable contractors and subcontractors that are committed to the Borough's goals of safe, timely, cost-effective project delivery; and

WHEREAS to establish efficient procurement procedures, the Borough specifically seeks to require that its public works contracts are to be performed by qualified "responsible" contractors and subcontractors that meet essential performance criteria, including: (a) satisfactory records of past performance, including compliance with applicable laws and industry regulations; and (b) adequate present performance capabilities, including contractor and subcontractor competency and availability of skilled craft personnel; and

WHEREAS effective contracting procedure must recognize and address unique challenges relating to procurement in the construction industry, including the following:

- (a) Construction is a highly competitive and transient industry, which requires a careful review of a firm's past performance, as well as its current capabilities to ensure contractors and subcontractors have the capability to successfully perform capital construction projects.
- (b) Construction is an inherently dangerous industry that requires craft personnel to receive both proper safety training and safety training; Geetha M. Waehrer et al., *Costs of Occupational Injuries in Construction in the United States*, 39 ACCIDENT ANALYSIS & PREVENTION 1258 (2007)(construction is a high risk industry and accounts for disproportionate share of work-related injuries); Bureau of Labor Statistics, *Fatalities in the Construction Industry*, MONTHLY LAB. REV., July 2014 (industry accounts for 40% of all fatal work-related falls).
- (c) Under virtually any market conditions, construction projects require effective assurances of a reliable supply of well-trained craft personnel because it is a highly skilled, labor-intensive industry; in recent years, however, this issue has become magnified insofar as industry is facing acute craft labor skill shortages that have been building for decades and are growing increasingly worse; such conditions pose major risks to the planning and execution of capital construction projects; Thaddeus Swanek, *New Report Finds Construction Contractors Struggling to Find Workers, Building Materials*, U.S. Chamber of Commerce (June 16, 2021) <https://www.cnn.com/2021/07/08/economy/construction-worker-shortage/index.html> ("88% of contractors report . . . difficulty finding skilled workers"); Vanessa Yurkevich, CNN Business (July 11, 2021), <https://www.cnn.com/2021/07/08/economy/construction-worker-shortage/index.html> (430,000 new workers will be need in construction this year and "1 million more over the next two years in order to keep up" with demand, *citing* Associated General Contractors); Gabriela Rico, *Labor Shortage, Steel-Cost Uncertainties Halt Work on Highly Anticipated Oro Valley Senior Community*, ARIZONA DAILY STAR (June 9, 2018), https://tucson.com/business/labor-shortage-steel-cost-worries-halt-anticipated-oro-valley-senior/article_9c48ee4f-7a90-5c89-90e2-aedd902738ec.html (labor shortage cited as cause for cancellation of \$100 million senior living center); CONSTRUCTION LABOR MARKET ANALYZER, CONSTRUCTION USERS ROUNDTABLE

(CURT), THE LONG-TERM OUTLOOK FOR CONSTRUCTION 6 (2017)(estimating impending deficit of 1.5 million skilled workers through 2022 in the construction industry); *Craft Labor Shortage Seriously Affecting Mega Projects: Poll*, Reuters (Jun. 29, 2017), *Eighty Percent of Contractors Report Difficulty Finding Qualified Craft Workers to Hire*, Associated General Contractors of America (2019); <https://www.constructionexec.com/article/the-skilled-labor-shortage-implications-for-construction-businesses>; Chris Ramirez, *Labor shortage causes Exxon to shift construction plans*, CORPUS CHRISTI CALLER-TIMES (Aug. 9, 2017), <https://www.caller.com/story/news/2017/08/09/labor-shortage-causes-exxon-shift-construction-plans/525241001/> (discussing how shortage of welders in the Gulf Coast delayed construction of world's largest ethylene plant); Ben DuBose, *ECF '16: Energy Contractors Need Newcomers to Ease Labor Shortage*, HYDROCARBON PROCESSING (Mar. 2016), <http://www.hydrocarbonprocessing.com/Article/3533820/Conference-news/ECF-16-Energy-contractors-need-newcomers-to-ease-labor-shortage.html> (reporting that craft labor shortages are primarily responsible for a 65% failure rate among mega-projects in Gulf Coast Region); Gavin Aronsen, *Labor Shortage Delays DuPont Plant Completion*, AMES TRIBUNE (Jan. 9, 2015), <http://amestrib.com/news/labor-shortage-delays-dupont-plant-completion> (discussing how the shortage of qualified workers delayed the completion of a \$200 million DuPont ethanol plant in Iowa); and

WHEREAS due to acute labor shortages in construction craft personnel, leading construction industry groups, including trade associations representing project owners, such as the Construction Users Roundtable (CURT), have repeatedly issued strong recommendations to parties purchasing construction services for large capital projects that they should adopt a pre-qualification standard that requires contractors and subcontractors to prove their participation in craft labor training programs in order to bid or perform work on projects; and

WHEREAS the above-referenced recommendations are specifically designed to protect the project owner's financial and proprietary interests in capital projects by ensuring that such firms provide skill training to construction craft personnel and have an adequate supply of trained, skilled construction workers to perform their projects; CURT, WP-1101, SKILLED LABOR SHORTAGE RISK MITIGATION (January 2015)(recommending that, to address skill challenges, project owners require contractors to provide skills training as a condition of bidding projects); MATT HELMER & DAVE ALTSTADT, ASPEN INST., WORKFORCE STRATEGIES INITIATIVE, APPRENTICESHIP: COMPLETION AND CANCELLATION IN THE BUILDING TRADES 8-9 (2013)(proposing a requirement that all contractors participating in publicly funded projects participate in registered apprenticeship programs); ROBERT LERMAN ET AL., BENEFITS AND CHALLENGES OF REGISTERED APPRENTICESHIP: SPONSORS' PERSPECTIVE ii (2009)(finding that 97% of employer-sponsors of registered apprenticeship programs would recommend the program to others and that over 80% of sponsors cited filling the demand for skilled workers as a "very important" benefit of apprenticeship); CURT, CONFRONTING THE SKILLED WORKFORCE SHORTAGE (June 2004)(recommending all owners prequalify contractors on the basis of craft training); DAVID H. BRADLEY & STEPHEN A. HERZENBERG, CONSTRUCTION APPRENTICESHIP AND TRAINING IN PENNSYLVANIA 3 (2002)(describing "free rider" market failure that incentivizes employers to under-train construction workers in the absence of apprenticeship programs); *Restoring the Dignity of Work: Transforming the U.S. Workforce Development System Into a World Leader (RT-335)*, NCCER (July 2018), <https://www.nccer.org/docs/default->

source/pdfs/cii-rt335-longver-final_web.pdf?sfvrsn=80e91f4f14 (“Owners should only do business with contractors who invest in training and maintain the skills of their workforce.”); and

WHEREAS in seeking to ensure the adequate development of trained, skilled personnel for the construction industry, as well as other industries, the United States Congress passed the Fitzgerald Act, Pub. L. No. 75-308, 50 Stat. 664, which created a system in which workers could be properly trained in construction skills and safety procedures through organized, formally registered apprenticeship training programs that meet established quality, safety and performance standards, and such programs are approved and monitored by the U.S. Department of Labor and state labor agencies, including the Pennsylvania State Apprenticeship Council; and

WHEREAS research from both government and industry underscores the benefits of and the need for expanding the use of apprenticeship training across the economy, especially in construction, as a means for promoting skills training to address current and future workforce development needs; *see e.g.*, Task Force on Apprenticeship Expansion: Final Report to: The President of the United States (2018), <https://omb.report/icr/201812-1205-001/doc/88448201> (apprenticeship programs justify investment as they provide substantial benefits, including *increased productivity*; these programs should be expanded as they offer a *key tool for addressing America’s skills gap*); U.S. DEPARTMENT OF COMMERCE, ECON. & STATISTICS ADMIN. & CASE WESTERN RESERVE UNIV., *THE BENEFITS AND COSTS OF APPRENTICESHIP: A BUSINESS PERSPECTIVE* (2016), <HTTPS://FILES.ERIC.ED.GOV/FULLTEXT/ED572260.PDF> (apprenticeship programs *unanimously supported* by participating employers; programs are *cost-effective due to higher worker productivity, improved safety, improved project quality, more reliable project staffing, and reduction in employee turnover*); U.S. DEP’T’S OF LABOR – COMMERCE, EDUCATION, & HEALTH & HUMAN SERVICES, *WHAT WORKS IN JOB TRAINING: A SYNTHESIS OF THE EVIDENCE* (2014)(apprenticeships provide effective method of worker training through “comprehensive, formal, work-place-based training model”) <https://www.dol.gov/sites/dol.gov/files/OASP/legacy/files/jdt.pdf>; CONSTRUCTION INDUSTRY INSTITUTE, *CONSTRUCTION INDUSTRY CRAFT TRAINING IN THE U.S. AND CANADA* 2007)(apprenticeship programs promote “productivity, improved safety, decreased absenteeism” and reduce employee turnover); U.S. DEPARTMENT OF LABOR EMPLOYMENT & TRAINING ADMIN., REGISTERED APPRENTICESHIP FACT-SHEET 1 (2000) (workers that complete apprenticeships are *more motivated, more productive, and have lower workers’ compensation costs* because of training programs’ emphasis on safety); PAUL M. GOODRUM, *CONSTRUCTION INDUSTRY CRAFT TRAINING IN THE UNITED STATES AND CANADA* (2000) (finding that for a single capital construction project, each dollar invested in craft training yields a return of \$1.30 to \$3.00); and

WHEREAS in recognition of the value created by apprenticeship training programs and the significant return-on-investment they produce for employers, employees and affected industries, several past federal administrations have taken various measures, including Executive Orders, to promote the expansion of apprenticeship training programs for the purpose of addressing immediate needs of employers and employees, as well as long-term workforce development needs to address future skill gap challenges; *see e.g.*, Clinton, W.J., *A Vision for Change for America*, Washington, D.C.: U.S. Gov’t. Printing Office, ISBN 0-16-041662-0, Feb. 17, 1993 (recognizing value of apprenticeship in serving interests of employers and employees); Proclamation No. 9363, 80 FR 68419 (Nov. 4, 2015) (which established National Apprenticeship Week to recognize and promote apprenticeship training across economy and led to 2016 apprenticeship report, *WHAT WORKS IN JOB TRAINING* by four federal agencies: U.S. DEP’T’S OF LABOR – COMMERCE,

EDUCATION, & HEALTH & HUMAN SERVICES, Exec. Order No. 13,845, 83 Fed. Reg. 35,099 (July 24, 2018) (creating a National Council for the American Worker to promote apprenticeship and training programs as a means of addressing the skills crisis facing the nation); TASK FORCE ON APPRENTICESHIP EXPANSION, FINAL REPORT TO THE PRESIDENT OF THE UNITED STATES 15 (2018) (estimating that every dollar spent by employers on apprenticeship yields a return of \$1.47); and

WHEREAS given the normal challenges concerning skill supply on capital construction projects, growing awareness of the value and benefits of apprenticeship training, and growing concerns over severe skill shortages, at least 14 states, as well as numerous local jurisdictions, have passed procurement laws requiring contractors on public works to participate official apprenticeship programs approved by federal or state government; *see e.g.*, 2020 Va. Acts Ch. 176; Colo. Rev. Stat. Ann. § 2492115 (2019); Me. Stat. tit. 38, §577.4 (2019); N.J. Stat. Ann. § 34:11-56.50 – 52 (2020); N.M. Stat. § 13-4D-4 (2018); Wash. Rev. Code § 39.04.320 (2018); Ind. Code § 5-30-5-3(b)(6) (2017); Md. Code, State Fin. & Proc. §§ 17-601 - 606 (2017); Md. Code, State Fin. & Proc. §§ 17-6A-- 06 (2017); Wy. Stat. § 16-6-902 (2017); 30 Ill. Comp. Stat. §500/30-22 (2015); R.I. Gen. Laws § 37-13-3.1 (2014); 8 CCR§ 230.1 (2011); Cal. Lab. Code § 1777.5 (2009); Haw. Rev. Stat. § 103-55.6 (2009); N.Y. Con. Stat., Labor Law § 816 b (McKinney's 2001); Executive Order 01.01.2013.05 Code MD R. § 01.01.2013.05; (NY) MOCS Apprenticeship Program Directive (January 2, 2013); and

WHEREAS one the most comprehensive, data-driven, empirical studies on the impact of apprenticeship requirements on public works contracting programs, conducted by Washington State it utilized such requires for several years, found compelling evidence that such requirements produced substantial benefits for procurement authorities; specifically, this research conclusively demonstrated that, in addition to other advantages, such policies generally *increase the number of project bidders and reduce bid costs* for affected projects. *See* WASH. STATE DEPARTMENT OF LABOR & INDUS. & WASH. STATE DEPARTMENT OF GEN. ADMIN., APPRENTICESHIP UTILIZATION 2009 LEGISLATIVE UPDATE (Dec. 2009); WASH. STATE DEPARTMENT OF TRANSPORTATION., APPRENTICESHIP UTILIZATION ADVISORY COMMITTEE REPORT (Jan. 2008); and

WHEREAS numerous construction industry organizations, as well as notable public policy groups, support apprenticeship as an effective means for providing craft labor personnel with essential training and skills, while providing them with valuable employment opportunities. Examples include: Associated Builders and Contractors (“ABC”)(“*ABC has become the world leader in apprenticeship and craft training . . .*”)(emphasis added), <https://www.abc.org/Education-Training/Craft-Training-Apprenticeship>; North America’s Building Trade Unions (“apprenticeship programs *train workers to become, highly-skilled . . . construction workers through a debt-free, technologically-advanced education . . . earn-as-you-learn programs with family-sustaining wages and provide health care coverage and retirement benefits*”), <https://nabtu.org/apprenticeship-and-training> (emphasis added); Center for American Progress (“Apprenticeship is a proven worker training strategy that combines on-the-job training with classroom instruction . . . [f]or workers, apprenticeship means a real job that leads to a credential that is valued in the labor market. Apprentices are paid for their time spent on the job, accumulate little to no student debt, and are generally retained once they have successfully completed their programs; Alastair Fitzpayne, *Apprenticeships Serve as Model of Skills-Based Training for Jobs of the Future*, The Aspen Institute, (2018)<https://www.aspeninstitute.org/blog-posts/apprenticeships-as-model-of-skills-based-training> (“Efforts to increase the number of apprenticeships have *broad bipartisan support with advocates at the federal, state, and local level . . .* both the Trump administration and Obama

administrations prioritized expanding apprenticeship programs to align the needs of workers and employers. In Congress, the Apprenticeship and Jobs Training Act of 2017—which seeks to expand the use of apprenticeships through an employer tax credit—has earned bipartisan support” in both the House and Senate)(emphasis added); and

WHEREAS reviewing courts have consistently recognized that states and local jurisdictions seeking to protect substantial financial and proprietary interests have the right to enact contracting and procurement legislation and/or to impose contract bid specifications designed to ensure the qualifications and performance capabilities of prospective contractors and subcontractors and their employees, including apprenticeship training requirements and other craft labor qualifications: *Allied Constr. Indus. v. City of Cincinnati*, 879 F.3d 215 (6th Cir. 2018) (Responsible Contractor Ordinance (“RCO”)); *Associated Builders & Contractors, E. Pa. Chapter, Inc. v. Cnty. of Northampton*, 376 F. Supp. 3d 476 (E.D. Pa. 2019), *aff’d*, --- F. App’x ---- (3d Cir. 2020) (unpublished decision) (RCO); *Associated Builders & Contractors, Inc. v. New Castle Cnty.*, 144 F. Supp. 3d 633 (D. Del. 2015) (RCO); *see also Bldg. & Constr. Trades Council of the Metro. Dist. v. Associated Builders & Contractors of Mass. & R.I., Inc.*, 507 U.S. 218 (1993) (Project Labor Agreement); *Associated Builders & Contractors v. Mich. Dep’t of Labor & Econ. Growth*, 543 F.3d 275 (6th Cir. 2008)(apprenticeship requirement in state licensing law); *Hotel Emps. & Restaurant Emps. Union, Local 57 v. Sage Hospitality Res., LLC*, 390 F.3d 206 (3d Cir. 2004)(labor agreements); and

WHEREAS the Borough finds that apprenticeship training programs which are registered with and approved by federal or state agencies, and maintained in accordance with regulations issued pursuant to the Fitzgerald Act, provide the most reliable means for securing a reliable supply of qualified craft labor for capital projects, and further recognizes that essential levels of construction quality, safety and cost-efficiency on its public works projects will be better achieved by requiring the use of contractors and subcontractors that participate in bona fide apprenticeship programs with a proven record of graduating apprentices and providing effective skill training in the construction industry; and


WHEREAS the Borough wishes to revise its procurement standards for public works construction to address these findings and considerations, limit project delivery risks and protect its financial and proprietary interests, and better ensure efficient procurement and successful delivery of these projects; and

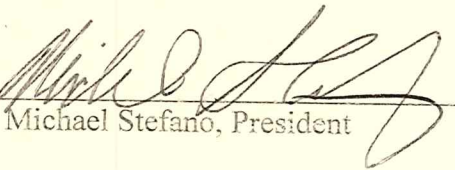
NOW, THEREFORE, BE IT RESOLVED that the Borough is committed to addressing the challenges it faces relating to public works projects by enacting necessary and appropriate procurement legislation to protect its proprietary and financial interests and create adequate safeguards to fully ensure the successful delivery of such projects to the greatest extent possible.

RESOLVED AND ADOPTED THIS 14TH DAY OF JUNE, 2022.

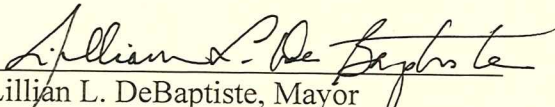
ATTEST:

COUNCIL FOR THE BOROUGH
OF WEST CHESTER



Sean Metrick, Secretary

By: 
Michael Stefano, President

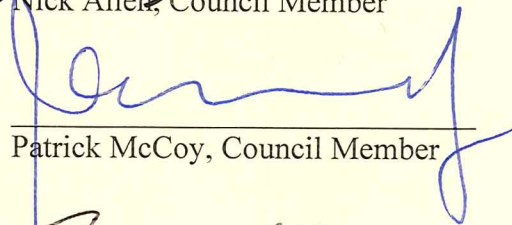
APPROVED THIS 14TH DAY OF JUNE, 2022.

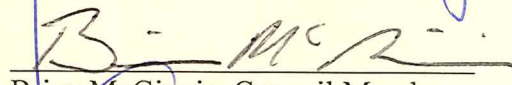

Lillian L. DeBaptiste, Mayor

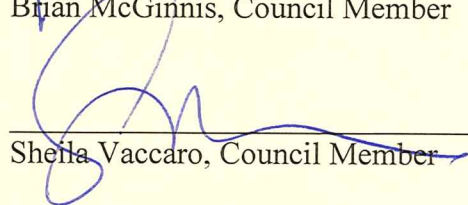
Lisa Dorsey, Vice-President


Bernie Flynn, Council Member


Nick Allen, Council Member


Patrick McCoy, Council Member


Brian McGinnis, Council Member


Sheila Vaccaro, Council Member