

ORDINANCE NO. 3620-22

AN ORDINANCE TO AMEND AND REVISE CHAPTER 81 "PURCHASING" OF THE BOROUGH CODE OF THE BOROUGH OF RUTHERFORD TO ADD Section 81-15 entitled "Requirement to use Apprentices for certain work"

WHEREAS the Governing Body of the Borough of Rutherford believes it is in the best interest of the Borough to amend and revise §81 entitled "**PURCHASING**" of the Borough Code to add a new section 81-15 "Requirement to use Apprentices for Certain Work."

WHEREAS, the Borough of Rutherford has a compelling interest in guaranteeing that public works projects meet the highest standards of safety and quality; and

WHEREAS, the Borough has a proprietary interest, as an owner, in the efficient use of resources and the protection of its investment in public works projects; and

WHEREAS, the Borough has proprietary and governmental interests in high standards and high qualifications; and

WHEREAS, the Borough believes that its interests are fostered and benefitted by requiring bidders which desire to bid on public works projects, of estimated to equal or exceed \$500,000 to employ highly skilled workers; and

WHEREAS, the State of New Jersey, as set forth in N.J.S.A. 52:38-1, has determined that a highly skilled workforce ensures lower costs for repairs and maintenance over the lifetime of a completed project; and

WHEREAS, using formally trained trade and craft workers ensures a level of competence, productivity, and worker safety that contributes to the timely completion of a public works project; and

WHEREAS, the publication "Apprenticeship Training In New Jersey - Directory of Information and Resources" prepared by the State of New Jersey Department of Labor and Workforce Development Division of Business Services ~ Office of Workforce Initiatives describes the benefits that apprenticeship programs provide to the public including but not limited to:

- Developing and maintaining a highly skilled workforce which has "learned how to learn" and which is well prepared to adapt to an ever-changing employment and economic environment that is the hallmark of today's global economy.
- Increased productivity from apprentices who are more versatile and better able to solve work-related problems than untrained workers.

WHEREAS, a requirement for apprenticeship programs that train highly skilled workers and related bidding requirements are reasonably related to the satisfactory performance and completion of public works projects; and

WHEREAS, a requirement for apprenticeship programs outlines a set of criteria that a contractor, bidding to work on a public works construction project, must meet in order to be awarded a contract; and

WHEREAS, N.J.S.A. 40A:11-2 "Definitions" provides that:

(27) "Lowest responsible bidder or vendor" means the bidder or vendor: (a) whose response to a request for bids offers the lowest price and is responsive; and (b) who is responsible.

(32) "Responsible" means able to complete the contract in accordance with its requirements, including but not limited to requirements pertaining to experience, moral integrity, operating capacity, financial capacity, credit, and workforce, equipment, and facilities availability.

(33) "Responsive" means conforming in all material respects to the terms and conditions, specifications, legal requirements, and other provisions of the request; and

WHEREAS, N.J.S.A. 40A:11-13 provides that any specifications for the provision or performance of goods or services shall be drafted in a manner to encourage free, open and competitive bidding and that no specifications may "(a) Require any standard, restriction, condition or limitation not directly related to the purpose, function or activity for which the contract is awarded"; and

WHEREAS, to meet the purpose of a bidder being responsible, a requirement of a bidder participating in a qualified apprenticeship program places all bidders on equal footing thereby maintaining a fair and level playing field that does not unnecessarily limit the number or type of bidders on public contracts in as much as all contractors will have a fair and equal chance to bid on Borough contracts.

WHEREAS, public works projects with engineering estimates that the total cost of the project to the Borough, exclusive of any land acquisition costs, will equal or exceed the threshold of \$500,000, will benefit from a requirement that a responsible bidder participated in an approved apprenticeship programs and related requirements advance the interests of the Borough in ensuring that these public works contracts result in cost efficiency, a skilled labor force, quality, safety and timeliness, with the exception of road paving projects; and

WHEREAS, that the Borough has determined that:

1. The Borough has compelling interest, as an owner, in guaranteeing that public works projects meet the highest standards of safety and quality.
2. The Borough has a proprietary interest, as an owner, in the efficient use of resources and the protection of its investment in public works projects.
3. A highly skilled workforce ensures lower costs for repairs and maintenance over the

lifetime of a completed public works project; ensures that trade and craft workers have been properly trained to adapt to an ever-changing employment and economic environment that is the hallmark of today's global economy; and increases productivity from apprentices who are more versatile and better able to solve work-related problems than untrained workers.

4. A requirement that a responsible bidder is one who participates in an apprenticeship program is consistent with N.J.S.A. 40A:11-13 in as much as the requirement is directly related to the cost, efficiency, skilled labor force, quality, safety and timeliness of the Borough's public works projects and with other state law.
5. An apprenticeship program requirement as a requirement of responsible bidder determination is consistent with N.J.S.A. 40A:11-6.1 which requires that public contracts be awarded not to the lowest bidder, but to the "lowest responsible bidder".
6. A requirement of apprenticeship programs as an element of responsibility places all bidders on equal footing thereby maintaining a fair and level playing field that does not unnecessarily limit the number or type of bidders on public contracts in as much as all contractors will have a fair and equal chance to bid on Borough contracts.
7. Requiring apprenticeship programs as an element of responsibility is "*inherently beneficial*" and supports to State of New Jersey policy as set forth in N.J.S.A. 34:1A-37 and N.J.S.A. 52:38-1:
 - A. The State of New Jersey, as set forth in N.J.S.A. 52:38-1, has determined that a highly skilled workforce ensures lower costs for repairs and maintenance over the lifetime of a completed project and such a requirement is directly related to the contract activity;
 - B. The State of New Jersey, as set forth in N.J.S.A. 34:1A-37 as an example, has recognized the inherent good in the encouragement and promotion of apprenticeship agreements and supports apprenticeship programs through programs of the State Department of Labor and Workforce Development and the "Jobs4Jersey" program;
8. Inherently beneficial apprenticeship programs that train highly skilled workers and improve efficiency in government projects are complimentary to the requirements of the Local Public Contracts Law; and

THEREFORE, BE IT ORDAINED by the Mayor and Council of Rutherford, County of Bergen, State of New Jersey, as follows:

§81-15 is hereby added to Chapter 81 as follows: of the Borough Code of the Borough of Rutherford, is hereby amended and revised as follows:

Section 1: “public works project” means any construction, reconstruction, demolition, alteration, custom fabrication, or repair work, or maintenance work, including painting and decorating, done under contract and paid for in whole or in part out of the funds of a public body, except work performed under a rehabilitation program.

Section 2: “apprenticeship program” and “registered apprenticeship” as set forth in N.J.S.A. 52:38-2 mean:

- “Apprenticeship program” means a registered apprenticeship program providing to each trainee combined classroom and on-the-job training under the direct and close supervision of a highly skilled worker in an occupation recognized as an apprenticeable trade, and registered by the Bureau of Apprenticeship and Training of the U.S. Department of Labor and meeting the standards established by the bureau, or registered by a State apprenticeship agency recognized by the bureau.
- “registered apprenticeship” means apprenticeship in a program providing to each trainee combined classroom and on-the-job training under the direct and close supervision of a highly skilled worker in an occupation recognized as an apprenticeable trade, and registered by the Office of Apprenticeship of the United States Department of Labor and meeting the standards established by that office.

Section 3. As a requirement for apprenticeship programs and related requirements as an element of bidder responsibility, bidders shall provide evidence that at the time of the bid, the bidder and all of the bidder’s sub-contractors participate in active apprenticeship and training programs approved and registered with the United States Department of Labor’s Bureau of Apprenticeship and Training for each of the trades of work contemplated under the awarded contract.

Section 4. Any bidder for the public works projects as defined herein with engineering estimates that the total cost of the project, exclusive of any land acquisition costs, engineering, design, and construction management costs, will equal or exceed \$500,000, who fails to comply with the requirement to participate in an apprenticeship program as described herein shall not be regarded as responsible under the meaning of N.J.S.A. 40A:11-2(32). This provision shall not apply to contracts for road paving contracts.

Section 5 If any provision of this ordinance is contrary to State or Federal law, State and/or Federal law shall control, but all other provisions of this ordinance shall remain in full force and effect.

SECTION 6. All ordinances of the Borough of Rutherford, which are inconsistent with the provisions of this ordinance, are hereby repealed to the extent of such inconsistency.

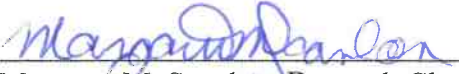
SECTION 7. If any section, subsection, clause or phrase of this ordinance is for any reason held to be unconstitutional or invalid by any court or competent jurisdiction, such decision shall not affect the remaining portion of this ordinance.


SECTION 8. All other provisions of §81 of the Code of the Borough of Rutherford are not further amended and remain in full force and effect.

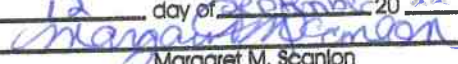
The ordinance shall take effect immediately upon final passage

ATTEST:

BOROUGH OF RUTHERFORD


Margaret M. Scanlon, Borough Clerk


Frank Nunziato, Mayor

I hereby certify that this is a true and exact copy of an ordinance adopted by the Mayor and Council of the Borough of Rutherford on the 12 day of September, 2022

Margaret M. Scanlon
Borough Clerk