

A LOCAL LAW to amend Chapter 78 of the Code of the Town of Yorktown entitled “Procurement for Goods and Services”

Be it enacted by the Town Board of the Town of Yorktown as follows:

Section I. Statement of Authority.

This local law is authorized by the New York State Constitution, the provisions of the New York Municipal Home Rule Law, the provisions of the New York State Labor Law, the relevant provisions of the Town Law of the State of New York, the laws of the Town of Yorktown and the general police power vested with the Town of Yorktown to promote the health, safety and welfare of all residents and property owners in the Town.

Section II. Chapter 78 of the Code of the Town of Yorktown is hereby amended by adding the following section 78-7:

**§ 78-7(A). Intent.**

The Town Board desires to develop sound apprenticeship training standards and to encourage labor and industry to participate in apprenticeship programs. Section 816-b of the New York State Labor Law authorizes the Town to require contractors and subcontractors to have apprenticeship agreements in place that are appropriate for the type and scope of work to be performed, and that have been registered with by the New York State Commissioner of Labor pursuant to Article 23 of the Labor Law.

The Town Board finds that New York State registered apprenticeship programs provide valuable educational and training tools for Town residents, and may facilitate the ability of Town residents to obtain skilled jobs. The Town Board finds that it would be valuable to encourage local businesses to participate in such state registered apprenticeship programs, to meet the need for skilled trade persons, while providing residents with the means to earn a better living.

**§ 78-7(B). Definitions.**

- I. “Apprenticeship Agreement” means: (1) an individual written agreement between an employer and an apprentice: (2) a written agreement between an employer or an association of employers, and an organization of employees describing conditions of employment for apprentices: or (3) a written statement describing conditions of employment for apprentices in a plant or plants where there is no bona fide employee organization.
- II. “Comptroller” means the Comptroller of the Town of Yorktown.
- III. “Construction Contract” means any contract to which the Town or any of its departments or agencies may be a direct or indirect party which involves the construction reconstruction, improvement, rehabilitation, repair, furnishing,

equipping of or otherwise providing for any building, facility, or physical structure in excess of \$500,000. A public entity need not be party to the Construction Contract. A Construction Contract includes: projects that the Town of Yorktown funds directly; projects that the Town of Yorktown funds indirectly by providing funds to a separate entity to perform the construction-type activity; privately financed construction projects specifically built with the intent of leasing the entire property to any agency or department of the Town of Yorktown government; and construction projects built under the Town of Yorktown's direction and later paid for with the Town of Yorktown funds.

- IV. "Contractor" means any bidder for, or awardee of, a Construction Contract, as defined in this section, obtained through competitive bidding procedures.
- V. "Date of Award of the Construction Contract" means the date that the Construction Contract has been approved by the Town Board.
- VI. "Subcontract" means any agreement between Contractors or any agreement between a Contractor and any person or entity under which any portion of the Contractor's obligation is performed, undertaken or assumed.
- VII. "Subcontractor" means an individual, sole proprietorship, partnership, joint venture or corporation which is engaged by a Contractor or another subcontractor pursuant to a Construction Contract.

**§ 78-7(C). Requirement of Apprenticeship Agreements for Construction Contracts.**

- I. A Contractor shall have in place at the time of submission of a bid for a Construction Contract an Apprenticeship Agreement appropriate for the type and scope of work to be performed. Such Apprenticeship Agreement shall be registered with the New York State Commissioner of Labor pursuant to the requirements found in Article 23 of the New York State Labor Law.
- II. A Contractor shall provide each Subcontractor with notice of the requirements for Apprenticeship Agreements as appropriate, and a copy of this Local Law, at the time of the execution of each respective Subcontract.
- III. A Subcontractor shall have in place within ninety (90) days of the Date of the Award of a Construction Contract an Apprenticeship Agreement appropriate for the type and scope of work to be performed. Such Apprenticeship Agreement shall be registered with the New York State Commissioner of Labor pursuant to the requirements found in Article 23 of the New York State Labor Law.
- IV. This provision shall not apply to Contractors or Subcontractors engaged in occupations which are not registered as apprenticeable by the New York State Commissioner of Labor.

- V. This provision shall not apply to emergency procurements entered into pursuant to section 103 of the New York State General Municipal Law.
- VI. The Town Board is authorized by Resolution to enact rules and regulations as may be deemed necessary for the implementation of this Chapter. This authority shall not include providing any further exemptions to the requirements of this Chapter, which are not already stated herein.

**§ 78-7(D). Additional Considerations Permissible.**

The Town, in addition to whatever considerations are required by law, may consider the degree to which career opportunities in apprenticeship training programs approved by the New York State Commissioner of Labor may be provided.

**§ 78-7(E). Proof of Participation and Apprentice Completion Rates.**

- I. Any prospective Contractor shall submit with their Construction Contract bid:
  - a) proof of an Apprenticeship Agreement:
  - b) most recently available certificates of completion, which show that each of the Contractor's applicable registered apprenticeship programs has an apprentice completion rate of at least thirty percent (30%) as determined by the New York State Department of Labor; and
  - c) a certification that it shall fulfill its obligations under Section 78-7(C)(II) of this Chapter.
- II. Within ninety (90) days of the Date of the Award of the Construction Contract, the Contractor shall submit to the Comptroller, for all Subcontractors under the Construction Contract:
  - a) proof of each Subcontractor's Apprenticeship Agreement(s): and
  - b) certificates of completion, which show that each of the Subcontractor's applicable registered apprenticeship programs has an apprentice completion rate of at least thirty percent (30%) as determined by the New York State Department of Labor.
- III. Completion Rate Exemptions.
  - a) A registered apprenticeship program, under which any Apprenticeship Agreement is executed, shall be exempt from the completion rate requirements of § 78-7(E)(I)(b) and § 78-7(E)(II)(b) where that apprenticeship program: (1) is still in its probation period with the State Department of Labor, consistent with 12 N.Y.C.R.R. ch. IX, pt. 601: or (2) is

within one year of the projected completion date of its first apprentice(s) eligible to be included in the completion rate calculation.

- b) For the exemption to apply, the Contractor shall submit to the Comptroller, on behalf of the Contractor and/or any Subcontractors, a copy of the relevant fully executed program registration agreement or proof of the State Department of Labor's provisional approval of the apprenticeship program.

#### **§ 78-7(F). Certified Payroll.**

The Contractor shall provide the Comptroller with a certified monthly payroll, which shall include the following information for each person employed to work on the Construction Contract by the Contractor and/or any Subcontractor: worker's name, address, last four digits of Social Security Number, classification(s) in which the worker was employed, hourly wage rate(s) paid, supplements paid or provided, and daily and weekly number of hours worked in each classification, and any other information requested by the Controller.

#### **§ 78-7(G). Applicability.**

- I. This Chapter shall apply to Construction Contracts and Subcontracts entered on or after the effective date of the law, but shall not apply to extensions or renewals that were authorized pursuant to a provision contained in a Construction Contract or Subcontract that was executed prior to the effective date of the law. Nothing herein shall impair existing Construction Contracts or Subcontracts.
- II. The requirements of Sections 78-7(C) and 78-7(E) of this Chapter, although recommended, shall not apply to a Contractor or Subcontractor upon receipt of a verified written statement that the total number of persons employed by such Contractor or Subcontractor is 14 or fewer.

#### **§ 78-7(H). Sanctions and Remedies.**

- I. The failure of a prospective Contractor to provide the following may result in the determination that the bid is non-responsive:
  - a. proof of an Apprenticeship Agreement for such Contractor as required by Section 78-7(C) or a verified written statement that the total number of persons employed by such Contractor is 14 or fewer: and/or
  - b. a certification that a copy of this Local Law and notice of the requirements therein shall be provided to each Subcontractor, as required by Section 78-7(E)(I)(C).

- II. The Town may withdraw or suspend its approval of one or more Subcontractors on any Construction Contract, or any portion thereof, in the event that it is established that a Subcontractor failed to comply with the requirements of this Chapter.

**§ 78-7(I). Copy of Law Provided & Miscellaneous.**

- I. The Town Clerk shall cause a copy of this Local Law to be provided with the bid specifications for each bid for a Construction Contract.
- II. This Local Law shall be included as an Appendix to each Construction Contract.
- III. Any inconsistent provision of the Town's procurement policy, as adopted prior to the effective date of this chapter by resolution of the Town Board, or as amended thereafter, shall be deemed superseded by the provisions of this chapter.

**Section III. Severability.**

If any clause, sentence, phrase, paragraph or any part of this local law shall for any reason be adjudicated finally by a court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder of this local law, but shall be confined in its operation and effect to the clause, sentence, phrase, paragraph or part thereof, directly involved in the controversy or action in which such judgment shall have been rendered. It is hereby declared to be the legislative intent that the remainder of this local law would have been adopted had any such provisions been excluded.

**Section IV. Repeal**

All ordinances, local laws and parts thereof inconsistent with this Local Law are hereby repealed to the extent of such inconsistency.

**Section V. Effective Date.**

This local law shall become effective upon filing in the office of the Secretary of State in accordance with the provisions of the Municipal Home Rule Law.