

# **Responsible Contractor Policy**

**Adopted: July 19, 2012**

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## **Section 1 Purpose**

The Delaware Sustainable Energy Utility (“SEU”) recognizes that there is a need to ensure that construction work on SEU-assisted projects is performed by responsible, qualified firms that maintain the capacity, expertise, personnel and other qualifications and resources necessary to successfully deliver projects a timely, reliable and cost-effective manner and in full compliance with contract specifications.

To effectuate the purpose of selecting responsible contractors for SEU-assisted projects, prospective contractors and sub-contractors, should be required to meet pre-established, clearly defined, minimum standards relating to contractor responsibility, including requirements and criteria concerning technical qualifications, competency, experience, adequacy of resources, including equipment, financial and personnel, and satisfactory records regarding past project performance, safety, law compliance and business integrity.

Further, due to the critical impact that skilled construction 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, for the purpose of both promoting successful project delivery and ensuring future workforce development. The SEU also recognizes it is beneficial to local communities to ensure that firms receiving public contracts provide adequate wages and benefits to their employees and utilize fair business, employment and training practices that have a positive impact on local communities affected by such projects.

Therefore, SEU shall require compliance with the provisions of this policy by business entities seeking to provide services to the SEU as specified herein. The requirements of this policy are intended to supplement, not replace, existing contractor qualification and performance standards or criteria currently required by law, public policy or contracting documents.

## **Section 2 Responsible Contractor Requirements**

- (a) All contractors and subcontractors of any tier that perform work valued at over \$25,000 on any public facility or public works project, including construction, demolition, alteration, renovation, repair, and contract service or contract maintenance work, shall meet the requirements of this policy.
- (b) All firms engaged in contracts covered by this policy 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 past performance record and a satisfactory record of law compliance, integrity and business ethics.

## **Section 3 Contractor Responsibility Certifications**

- (a) As a condition of performing work on a public works contract subject to this policy, a general contractor, construction manager or other lead or prime contractor seeking award of a contract shall submit a Contractor Responsibility Certification at the time it submits its bid for a contract.
- (b) The Contractor Responsibility Certification shall be completed on a form provided by SEU 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 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 valid, effective licenses, registrations or certificates required by federal, state, county, 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.
- (2) The firm meets the bonding requirements for the contract, as required by applicable law or contract specifications and any insurance requirements, as required by applicable law or contract specifications, including general liability insurance, workers compensation insurance 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 other certification revoked or suspended in the past three years.
- (6) The firm and its owners have not been convicted of any crime relating to the contracting business in the past ten years.
- (7) The firm has not within the past three years 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 \$1,000 or more.
- (8) The firm will pay all craft employees that it employs on the project the current wage rates and fringe benefits as required under applicable federal, state or local wage laws.
- (9) All craft labor that will be employed by the firm for the project have completed at least the OSHA 10 hour training course for safety established by the U.S. Department of Labor, Occupational Safety & Health Administration.
- (10) The firm will employ craft employees in all classifications and individual trades required to successfully perform the work related to this project.
- (11) The firm has participated in a Class A Apprenticeship Program for the past three years, at a minimum, 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, a Class A Apprenticeship Program is an apprenticeship program that is currently 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.

(B) To demonstrate compliance with this section, 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.

(12) The firm has all other technical qualifications and resources, including equipment, personnel and financial resources, to perform the referenced contract, or will obtain same through the use of qualified, responsible subcontractors.

(13) The firm will maintain all qualifications, resources and capabilities referenced in this certification throughout the duration of the project.

(14) The firm shall notify the SEU within seven days of any material changes to all matters attested to in this certification.

(15) The firm understands that the Contractor Responsibility Certification required by this section 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 policy shall not establish a presumption of contractor responsibility and the SEU may require any additional information it deems necessary to evaluate a firm's status as a responsible contractor, including technical qualifications, financial capacity or other resources and performance capabilities. The SEU 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 policy.

(f) If the submitting firm has ever operated under another name or controls, 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 a separate statement 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 SEU because of its refusal to accept a bid for failing to provide information required by this section.

#### **Section 4 Notice of Intent to Award Contract**

- (a) After it has received bids for a project, the SEU shall issue a *Notice of Intent to Award Contract* to the firm offering the lowest responsive bid.
- (b) Such Notice shall be issued immediately or as soon as practicable after bids are submitted and shall stipulate that the contract award will be conditioned on the issuance of a written Contractor Responsibility Determination, as required by section 6 of this policy and any other conditions determined appropriate by the SEU.

## **Section 5 Subcontractor Lists, Subcontractor Responsibility Certifications**

- (a) Within seven days from the date of Notice of Intent to Award Contract, a prospective awardee shall submit to the SEU a Subcontractor List containing the names of subcontractors that will be used for the referenced project, their addresses and a description of the work each listed subcontractor will perform on the project.
- (b) At the time a prospective awardee submits the Subcontractor List it shall also submit Subcontractor Responsibility Certifications for all listed subcontractors to the SEU. Subcontractor Responsibility Certifications shall be executed by the respective subcontractors on forms prepared by the SEU and shall contain the same information and representations required in Contractor Responsibility Certifications, including verification of apprenticeship qualifications as required by Section 3(c)(11), for each trade or classification of craft workers it will employ on the project.
- (c) Subcontractor Responsibility Certifications shall be executed by persons 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.

## **Section 6 Contractor Responsibility Review and Determination**

- (a) After a Notice of Intent to Award Contract has been issued, the SEU shall undertake a review process for a period of at least 30 days to determine whether the prospective awardee is a qualified, responsible contractor in accordance with the requirements of this policy and other applicable laws and regulations and has the resources and capabilities to successfully perform the contract.
- (b) As part of this review process, the SEU shall ensure that the Contractor Responsibility Certification, the Subcontractor List and the Subcontractor Responsibility Certifications, as required by this act, have been submitted and properly executed.
- (c) The SEU 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 SEU 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 its internal review, the SEU 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 shall issue a 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 SEU shall advise the firm of its finding in writing and proceed to conduct a responsibility review of the next lowest, responsive bidder or, if necessary, re-bid the project.

- (e) The Contractor Responsibility Determination shall be issued at least 30 days after the date of the Notice of Intent to Award Contract. This Responsibility Determination may be revoked or revised in any manner at any time if the SEU obtains relevant information warranting any such revocation or revisions.

## **Section 7 Subcontractor Responsibility Review Requirements**

- (a) A construction manager, general contractor or other lead or prime contractor shall not be permitted to use a subcontractor on any work performed for the SEU unless it has identified the subcontractor on its Subcontractor List and provided a Subcontractor Responsibility Certification in accordance with the requirements of Section 5 of this policy.
- (b) A subcontractor listed on a firm's Subcontractor List shall not be substituted unless written authorization is obtained from SEU and a Subcontractor Responsibility Certification is provided for the substitute subcontractor.
- (c) In the event that the SEU determines that a prospective subcontractor listed by the apparent low bidder does not meet the responsibility standards of this Section, 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;
  - (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.
- (d) In the event that a subcontractor is disqualified under this policy, the general contractor, construction manager or other lead or prime contractor shall not be permitted to make any type of contractual claim against SEU on the basis of a subcontractor disqualification.

## **Section 8 Public Review Process**

- (a) The Contractor Responsibility Certification for a firm identified in a Notice of Intent to Award Contract, Subcontractor Lists and Subcontractor Responsibility Certifications shall be made immediately available to the public for inspection through a publicly accessible website or other comparable means.
- (b) During the Public Review Period, which shall be the 30 day period after the *Notice of Intent to Award Contract*, any person or organization may protest a contractor or subcontractor for failing to meet applicable requirements of this policy or on any other relevant grounds by submitting a letter with supporting evidence to the SEU.
- (c) If the SEU 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 SEU for a period of three years and shall be subject to any other penalties and sanctions, including contract termination, available to the SEU under law. A contract terminated under these circumstances shall further entitle the SEU to withhold payment of any monies due to the firm as damages.

- (d) A procurement contract subject to this policy shall not be executed until all requirements of this policy have been fulfilled and until Contractor and Subcontractor Responsibility Certifications and Subcontractor Lists have been made available for public inspection for at least twenty one days.

**Section 9 Severability, Effective Date**

- (a) If any provision of this policy shall be held to be invalid or unenforceable by a court of competent jurisdiction, any such holding shall not invalidate any other provisions of this policy and all remaining provisions shall remain in full force and effect.
- (b) This policy shall become effective July 19, 2012, but the SEU shall take such anticipatory administrative action in advance as shall be necessary for the implementation of this policy.
- (c) The requirements of this policy shall not apply to contracts executed prior to the effective date of this act, except that the exercise of an option on a contract covered by this policy shall be deemed to create a new contract for purposes of this policy.