

COUNCIL OF THE BOROUGH OF PROSPECT PARK
PASSAIC COUNTY, NEW JERSEY

RESOLUTION

Motion by: C. Matarì Seconded by: C. Ortiz

RESOLUTION #2022-87

**TITLE: RESOLUTION OF THE BOROUGH OF PROSPECT PARK
ESTABLISHING A PROCUREMENT POLICY WHICH WILL
ENSURE CERTAIN QUALIFIED CONSTRUCTION CONTRACTS
ARE IN THE BEST INTERESTS OF THE COMMUNITY, SUCH
THAT LOCAL AND DIVERSE WORKERS & EMPLOYERS ARE
UTILIZED, APPRENTICESHIP TRAINING AND WORKER
SAFETY ARE PROMOTED, FAIR WAGES ARE PROVIDED AND
ENFORCED, LAW-ABIDING CONTRACTORS ARE
PRIORITIZED AND ENVIRONMENTAL CONCERNS OF THE
BOROUGH OF PROSPECT PARK ARE ADDRESSED**

WHEREAS, the Borough of Prospect Park has a compelling interest in assuring that certain construction projects, where it is a party to the contract, meet the highest standards of safety, workmanship, quality; and

WHEREAS, the Borough of Prospect Park as an owner, is concerned with the efficient use of its resources and protection of its investment in these construction projects; and

WHEREAS, the Borough of Prospect Park believes that public works projects represent significant investments of public funds; and

WHEREAS, the Borough of Prospect Park believes that public works projects require skilled work, competency, tradesman and craftsman; and

WHEREAS, the Borough of Prospect Park believes that the public interest is fostered and benefited by Contractors that employ highly skilled workers and train certified apprentices; and

WHEREAS, the Borough of Prospect Park believes that Contractors awarded contracts for public works projects, are applying a higher degree of responsibility when such Contractors utilize a workforce of highly skilled workers and a Contractor's workforce is a condition directly related to the purpose and activity of public works projects; and

WHEREAS, trade and craft apprenticeship and training programs registered with the United States Department of Labor's Bureau of Apprenticeship and Training, provide a means of supplying and ensuring highly skilled workers in a cost-effective manner; and

WHEREAS, registered trade and craft apprenticeship programs provide a public benefit in training, developing and maintaining a highly skilled workforce and are complementary to public projects; and

WHEREAS, the Borough of Prospect Park believes that developing the next generation of craft-workers is vitally important and seeks to foster this development by requiring that an apprentice should be utilized for each trade classification present on the public project, assuming appropriate journeyman to apprenticeship ratio can be achieved; and

WHEREAS, the Borough of Prospect Park wishes to ensure that all subcontractors working at a project are identified and reported to the public body; and

WHEREAS, the Borough of Prospect Park recognizes that employee misclassification is a rapidly growing issue which directly and adversely impacts taxpayers; and

WHEREAS, the Borough of Prospect Park believes the illegal practice of employee misclassification is curtailed when a responsible general contractor is engaged in a direct contractual relationship with all subcontractors on the project; and

WHEREAS, the Borough of Prospect Park seeks to ensure contractors awarded contracts for qualified projects for the Borough of Prospect Park make a good faith effort to hire and utilize residents of the Borough of Prospect Park and the County of Passaic; and

WHEREAS, the Borough of Prospect Park makes a good faith effort to hire and utilize minority and female craftspeople of the Borough of Prospect Park and the County of Passaic; and

WHEREAS, the Borough of Prospect Park makes a good faith effort to hire and utilize minority and female contractors and other small businesses; and

WHEREAS, respective of the Occupational Safety and Health Act of 1970, as amended (OSHA), the Borough of Prospect Park believes safety to be of paramount consideration when public funds are invested in such construction projects; and,

WHEREAS, ensuring the safety of workers is of paramount importance to the Borough of Prospect Park; and

WHEREAS, with respect to the performing of work on a qualified construction project, a responsible contractors and their subcontractors demonstrates a higher degree of responsibility should they have at least one (1) supervisor or foreman onsite who has successfully completed an OSHA 30- hour construction safety and health course and all other workers for the contractor and subcontractors shall have completed an OSHA 10-hour; and

WHEREAS, all contractors and subcontractors shall furnish copies of the OSHA certification cards for employees appearing on certified payroll records when said weekly payroll records are submitted to Borough of Prospect Park; and

WHEREAS, the Borough of Prospect Park recognizes that trade misclassification by unscrupulous employers adversely impacts the rightful earnings of craftsmen; and

WHEREAS, the Borough of Prospect Park seeks to ensure that all workers work on a publicly funded project within Borough of Prospect Park fully understand what rate of pay they are entitled to based upon the trade they are performing; and

WHEREAS, the Borough of Prospect Park shall require all contractors and subcontractors performing construction work within Borough of Prospect Park to hold an on-site orientation for each worker performing work on the publicly funded project during their first day on the project informing of them of their rights under the New Jersey Prevailing Wage Act; and

WHEREAS, during the onsite orientation for employees, the employer shall providing each employee a project-specific document that includes the worker's full name, the trade they will be performing and the rate of pay they are entitled to that shall be memorialized by the signatures of both the employer and employee, with original copies being retained by the employer, the employee and a copy shall be submitted to the Borough of Prospect Park along with their weekly certified payroll submission for each employee reflected on the payroll record.

NOW THEREFORE BE IT RESOLVED by the Mayor and Council of the Borough of Prospect Park that it hereby adopts the following Community Procurement Policy in order to promote higher economic, social and environmental standards on qualified public construction works projects to state as follows:

SECTION 1. Definitions

The following terms shall have the following meanings:

“Apprentice program” shall mean a registered apprenticeship program recognized by the United State Department of Labor (“USDOL”) and registered by a State apprenticeship agency recognized by USDOL.

“Contractor” shall mean a person or business entity awarded a contract by this public entity on a qualified project and shall also mean any subcontractor of such contractor, including those without direct contractual privity but who are performing work associated with such qualified project.

“Employee” shall mean any individual who is employed by a contractor.

“Qualified Project” shall mean the construction, reconstruction, building, altering, repairing, improving or demolishing of any public structure, facility or improvement constructed or acquired by this public entity to house or provide local government functions and that are paid for, in whole or part, by this public entity or the state, or both in excess of five million dollars (\$5,000,000.00).

SECTION 2. Qualified Project Requirements

A. The Borough of Prospect Park, in addition to complying with the New Jersey Public Contracts Law, N.J.S.A. 40A:11-1, et seq., on Borough public works construction projects, which in the Borough Engineer's cost estimate shall exceed five million (\$5,000,000.00), shall cause any contractor bidding for a qualified project to submit an affirmation disclosing and agreeing to the following stipulations:

1. The contractor shall disclose any past federal or state debarments and any federal, state or local crimes or violations associated with fraud, theft, environmental law, safety laws, including OSHA, labor law or human rights.

2. The contractor will make a good faith effort to employ local residents for completion of the project, when it has a need for new employees, in an effort to meet a goal of 10% local worker participation on the project. Good faith effort shall include, but not be limited to: hosting a public job fair prior to the commencement of the Project open to residents of the Borough of Prospect Park and/or the County of Passaic, posting of available employment opportunities within the Borough of Prospect Park and/or Passaic County, posting of available employment opportunities with the Borough of Prospect Park and/or Passaic County, advertisement of employment opportunities in a newspaper of general circulation through-out the Borough of Prospect Park and/or Passaic County, and internet advertisements.

3. The contractor will make a good faith effort to employ minority and female craftspeople for completion of the qualified project when such contractor has a need for new employees to complete the project, in an effort to meet the goal of having 10% minority and female participation on the project. Good faith effort shall include, but not be limited to: hosting a public job fair prior to the commencement of the Project open to all applicants in an attempt to identify, hire and utilize minority and female craftspeople through the posting of available employment opportunities within the Borough of Prospect Park and/or Passaic County, posting of available employment opportunities with the Borough of Prospect Park and/or Passaic County, advertisement of employment opportunities in a newspaper of general circulation through-out the Borough of Prospect Park and/or Passaic County, and internet advertisements.

4. The contractor shall, as a material condition of the contract, make a good faith effort to utilize minority owned businesses, women owned businesses and small business enterprises on the qualified project. "Minority owned business" shall mean that at least 51% of the business is owned by an individual who is a United States citizen or permanent resident alien who has and can demonstrate membership in one of the following groups: Black persons having origins in any of the Black African racial groups; Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American Descent of either Indian or Hispanic origin, regardless of race; Native American or Alaskan native persons having origins in any of the original peoples of North America; Asian and Pacific Islander persons having origins in any of the Far East countries, South East Asia, the Indian subcontinent or the Pacific Islands. "Small business enterprise" shall mean a business with an annual gross income which is determined by the United States Small Business Administration.

5. The contractor shall, as a material condition of the contract, require that all contractors on the qualified project, including itself if it directly hires employees performing construction, participate in an apprenticeship program. Each contractor shall

participate in an apprentice program appropriate for the type and scope of work it is performing on the qualified project based on the trade or craft its employees are skilled in. At least one employee of each contractor shall be registered in an apprenticeship program appropriate for the type and scope of work being performed. In the event a contractor employs multiple crafts then at least one employee from each craft shall be registered in an apprenticeship program. Failure of any contractor or subcontractor to comply with this apprentice program requirement shall be considered a default on its contract and grounds for termination of its association with the qualified project. The public entity may waive this requirement only if its enforcement would jeopardize receipt of any federal, state or third-party grant funding, or otherwise be prohibited under the terms of such federal, state or third-party grant funding

6. All contractors, when performing work on the qualified project, will have at least one (1) supervisor or foreman onsite who has successfully completed an OSHA 30-hour construction safety and health course and must provide evidence that all other employees of the contractor or subcontractors working on site have completed an OSHA 10-hour construction safety and health course when submitting certified payroll records on a weekly basis. This course pertains to the guidelines set by the Occupational Safety and Health Administration (OSHA), on their website at <https://www.osha.gov/>

7. All contractors and subcontractors shall hold employee orientations for each worker prior to the worker performing work on the project in an effort to educate employees as to the rate of pay they should realize for the trade they are performing. This orientation shall be held at the job site, and the public entity shall be informed of scheduled orientations. During the onsite orientation for employees, the employer shall provide each employee a project specific document that includes the worker's full name, the trade they will be performing, the rate of pay they are entitled to and all options available to recover unpaid wages, including but not limited to general contractor liability detailed in this Policy, that shall be memorialized by the signatures of both the employer and employee, with original copies being retained by the employer, the employee and a copy shall be submitted to the public entity along with their weekly certified payroll submission for each employee reflected on the payroll record

8. The contractor will be jointly and severally liable for all unpaid wage and benefits of every employee that performs construction work on the qualified project.

9. The contractor shall submit complete certified payroll reports to the public entity and shall ensure that all subcontractors submit such reports as required by law. Certified payroll reports shall be submitted not less than two times per month. Failure of a subcontractor to submit a timely certified payroll report, shall be deemed a violation on the subcontractor and contractor.

10. The contractor, within fourteen (14) days of receiving a Notice of Intent to Award Contract or the time frame designated by the Borough, shall, as the prospective awardee, submit a Subcontractor List in accordance with this resolution.

11. The contractor will not allow any subcontractor to utilize any other business entity to perform the portion of construction work, which is the responsibility of such subcontractor, unless the contractor is also party to the contract with such other business entity. Failure to comply with this provision shall be grounds for public entity's cancellation of the contract with the contractor but shall not remove the contractor's responsibility under this Policy to any worker employed by such other business entity.

12. Failure to submit or properly disclose information in an affirmation to any of the stipulations of this Policy, may be grounds for rejection of the Contractors bid on the qualified project.

B. Subcontractor List and Responsibility Requirements:

1. Within fourteen (14) days of receiving a Notice of Intent to Award Contract, unless specified otherwise, the prospective awardee of a contract for a Qualified Project shall submit a Subcontractor List, which provides the name and address of all 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.

2. The prospective awardee and/or Contractor shall not be permitted to use a subcontractor on any work performed for the Borough of Prospect Park on a Qualified Project unless it has identified the subcontractor on its Subcontractor List and provided a Subcontractor Responsibility Certification in accordance with the requirements of this Policy.

3. 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 of Prospect Park.

4. 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

5. The Subcontractor Responsibility Certifications shall be executed by the respective subcontractors on forms prepared by the Borough of Prospect Park and contain the same information, representations and supporting information required in Contractor Responsibility Certifications, including verification of apprenticeship qualifications required by this Policy for each trade or classification of craft workers it will employ on the Qualified Project.

6. 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.

7. A subcontractor listed on a firm's Subcontractor List shall not be substituted unless written authorization is obtained from Borough of Prospect Park and a Subcontractor Responsibility Certification is provided for the substitute subcontractor and is permitted by law.

8. In the event that the Borough of Prospect Park determines that a subcontractor fails to meet the requirements of this Policy or is otherwise determined to be non-responsible, it may, after informing the prospective awardee, exercise one of the following options:

a. To the extent permitted by law, 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 of Prospect Park.

b. To the extent permitted by law, 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

c. To the extent permitted by law, disqualify the prospective awardee and reject the bid of the prospective awardee and award the bid on the Qualified Project to the next lowest responsive responsible bidder who shall meet the requirements of this Policy.

9. 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 Prospect Park on the basis of a subcontractor disqualification.

C. Compliance.

1. In an effort to ensure compliance, the Borough of Prospect Park directs that the Borough Engineer and or his/her designee, conduct random and reasonable cause inspections and/or audits of contractors and subcontractors on qualified projects to ensure compliance with applicable laws, regulations, and policies as promulgated herein. All contractors and subcontractors shall be required to fully cooperate with the Borough of Prospect Park for inspections and/or audits of such contractor's or subcontractor's records and materials pertaining to applicable state laws, regulations and policies as promulgated herein. In the event that non-compliance or false information by a contractor or sub-contractor is found associated with any provisions of this resolution, the designated public body may issue a penalty in the maximum

amount permitted by law for a first and subsequent violations. Nothing in this subdivision shall prevent the public entity from terminating its contract with non-compliant contractor.

2. The Borough of Prospect Park shall notify a contractor of any harmless instances of non-compliance with this ordinance, allowing the contractor 72 hours to abate the non-conformity. A contractor shall be deemed in default of their contract for failing to correct the identified non-conformities within 72 hours of notification.

D. Exemption.

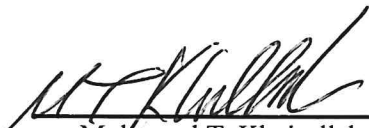
The Business Administrator may, having taken into consideration the nature, size and complexity of the Qualified Project, determine that the within Policy is not required for a certain Qualified Project and waive all or some of the requirements of this Policy on a project-by-project basis.


BE IT FURTHER RESOLVED by the Mayor and Council of the Borough of Prospect Park that it hereby authorizes and directs the Acting Borough Clerk to forward the within Resolution to the Borough Engineer and all other Borough Officials; and

BE IT FURTHER RESOLVED by the Mayor and Council of the Borough of Prospect Park that it hereby authorizes the Borough Administrator, Borough Engineer and all other Borough Employees and Officials to take all necessary action in order to effectuate the within Resolution and the Policy adopted herein.

I hereby certify that this resolution, consisting of 8 page(s), was adopted at a special meeting of the Borough Council of the Borough of Prospect Park, held this 16th day of May, 2022.

	Moved	Second	Ayes	Nays	Abstain	Absent
Shah			✓			
Artis			✓			
Hussain			✓			
Matari	✓		✓			
Ortiz		✓	✓			
Perez			✓			


Mohamed T. Khairullah
Mayor


Beauty Nadim,
Acting Borough Clerk