

ORDINANCE NO. ____

AN ORDINANCE ESTABLISHING RESPONSIBLE AND RESPONSIVE BIDDER REQUIREMENTS ON PUBLIC WORKS PROJECTS

WHEREAS, Indiana Code 36-1-3-1 et seq. permits any city in the State of Indiana to exercise any power or perform any function necessary to the public interest in the context of its local affairs, which is not prohibited by the Constitution of the United States or of the State of Indiana, or denied or preempted by any other law, or is not expressly granted by any other law to another governmental entity;

WHEREAS, the city government expends substantial funds for the construction of public works, a portion of that money being derived from taxes paid by residents;

WHEREAS, the city government seeks to preserve administrative resources by ensuring that only qualified contractors and subcontractors are awarded contracts on public works construction projects;

WHEREAS, the city government, based upon its experience, has determined that quality workmanship, efficient operation, safety, and timely completion of projects are not necessarily insured by awarding a construction contract solely on the basis of the low bid;

WHEREAS, the city government seeks to enhance its ability to identify the lowest “responsible and responsive bidder” on all public works construction projects by instituting more comprehensive submission requirements which are in compliance with Indiana State Law; and

WHEREAS, “An Ordinance Establishing Responsible and Responsive Bidder Requirements on Public Works Projects” will assure efficient use of taxpayer dollars, will promote public safety, and is in the public interest.

NOW, THEREFORE, BE IT ORDAINED by the Common Council of the City of _____, Indiana, that:

Section 1. Public works

For purposes of this chapter, the term “public works” shall mean the following: any constructing, altering, reconstructing, repairing, rehabilitating, refinishing, refurbishing, remodeling, remediating, renovating, custom fabricating, maintenance, landscaping, improving, moving, wrecking, painting, decorating, demolishing, and adding to or subtracting from any public building, structure, airport facility, highway, roadway, street, alley, bridge, sewer, drain, ditch, sewage disposal plant, water work, parking facility, railroad, excavation, or other project, development, real property, or improvement, or to do any part thereof, whether or not the performance of the work herein described involves the addition to, or fabrication into, any structure, project or development, real property or improvement herein described of any material or article of merchandise, which is paid for out of a public fund or out of a special assessment. The term also includes any public works leased by a political subdivision under a lease containing an option to purchase.

Section 2. Responsible and Responsive Bidder

In determining whether a contractor is a “responsible and responsive bidder” for the award of a public works contract, the contractor must submit the following information and supporting documentation verified under oath on a form designated by the City, in order for the bid to be accepted:

- A. Documents evidencing compliance with all applicable laws and ordinances pre-requisite to doing business in Indiana;
- B. A valid federal employer tax identification number or, if an individual, a valid social security number;
- C. A statement of compliance with provisions of Section 2000e of Chapter 21, Title 42 of the United States Code and Federal Executive Order No. 11246 as amended by Executive Order No. 11375 (known as the Equal Opportunity Employer provisions);
- D. Disclosure of the name and address of each subcontractor from whom the contractor has accepted a bid and/or intends to hire on any part of the project. Further, each such subcontractor shall be required to adhere to the requirements set forth herein as though it were bidding directly to the City. Each contractor shall submit all subcontractors information and supporting documentation to the City no later than the date and time of the contract award;
- E. Certificates of insurance showing the following coverage necessary for the project:
 - i. General liability (\$1 million minimum coverage);
 - ii. Worker’s compensation (statutory limits); and
 - iii. Automobile liability.

Amounts not herein listed shall be determined by the awarding agency and set forth in the bid specifications;

- F. A statement of compliance with all provisions of the Indiana Common Construction Wage law (Indiana Code 5-16-7-1 et seq.), and all rules and regulations therein, for the past five (5) years.

Such statement shall also provide that the contractor has reviewed the Common Construction Wage law (or federal Davis-Bacon and related Acts), has reviewed and agrees to pay the applicable common construction wage (or prevailing wage rate) as set forth in the common construction wage rate schedule (or prevailing wage determination) attached to the bid specifications, and will strictly comply with the Common Construction Wage law (or federal Davis-Bacon and related Acts) and related requirements.

A contractor who has been found by the Indiana Department of Labor to be in violation of the Common Construction Wage law twice within a three (3) year period shall be deemed not to be a Responsible and Responsive Bidder for two (2) years from the date of the latest finding;

- G. Evidence of participation in apprenticeship and training programs applicable to the work to be performed on the project which are approved by and registered with the United States Department of Labor's Office of Apprenticeship, or its successor organization. The required evidence includes a copy of all applicable apprenticeship standards and Apprenticeship Agreement(s) for any apprentice(s) who will perform work on the public works project;
- H. A copy of a written plan for employee drug testing;
- I. A statement that individuals who will perform work on the public works project on behalf of the contractor are properly classified as either (i) an employee or (ii) an independent contractor under all applicable state and federal laws and local ordinances;
- J. A statement that all employees are (i) covered under a current worker's compensation insurance policy and (ii) properly classified under such policy.

If the contractor is insured with a carrier, the evidence of worker's compensation insurance shall be a copy of the "Information Page" of the contractor's worker's compensation policy and any continuation of that Information Page which include the name and address of the insured, as well as the class codes the compensation premium is based on and the total estimated remuneration per class code;

- K. A statement listing all employees who will perform work on the public works project and evidence that all listed employees are covered by a health and welfare plan and a retirement plan. The required evidence includes a copy of the summary plan description(s) or similar document(s); and
- L. Documents evidencing any professional or trade license required by law or local ordinance for any trade or specialty area in which the contractor is seeking a contract award. Additionally, the contractor must disclose any suspension or revocation of such license held by the company, or of any director, officer or manager of the company.

Any material changes to the contractor's status, at any time, must be reported in writing to the City within fourteen (14) days of its occurrence. Failure to comply with this requirement is grounds for the contractor to be deemed a non-responsible and non-responsive bidder.

Section 3. Additional Criteria Available

If all of the above criteria are otherwise satisfied the City may also consider the following factors, in its discretion, in awarding the project if such information is requested:

- A. Statements as to past performance, which shall give an accurate and complete record of all public works projects completed in the past three (3) years by the contractor. Such statements shall include the names and addresses of the projects, original contract price, final contract price, and the names of all subcontractors used, if applicable, and a statement as to compliance with completion deadlines; and/or

- B. Any determinations by a court or governmental agency for violations of federal, state, or local laws including but not limited to violations of contracting or antitrust laws, tax or licensing laws, environmental laws, the Occupational Safety and Health Act (OSHA), the National Labor Relations Act (NLRA), or federal Davis-Bacon and related Acts.

Section 4. Incomplete Submissions by Bidders and Subcontractors

It is the sole responsibility of the contractor to comply with all submission requirements at the time it submits its bid to the City. The submission requirements also apply to all subcontractors, except that the contractor shall submit all subcontractor submissions to the City no later than the date and time of the contract award. Contractor and/or subcontractor submissions deemed inadequate or incomplete may result in a determination that the contractor is not a responsible and responsive bidder.

Section 5. Lowest Bidder Not Chosen

When the award is not recommended to be given to the lowest bidder, a statement of the reason for such recommendation shall be prepared by the purchasing agent.

Section 6. Multiple Low Bids

When two or more responsible and responsive bidders submit the same low bid, the contract award shall be determined by drawing lots at a public meeting of the Common Council, unless one bidder is a local contractor and one is a non-local contractor, in which event the local contractor shall be awarded the contract.

Section 7. Certified Payroll

All contractors and subcontractors working on a public works project, the value of which meets or exceeds the threshold levels set by the State of Indiana in the Indiana Common Construction Wage law, shall submit a weekly certified payroll indentifying each of its employees by name, the employee's job classification, hourly rate of pay and hourly fringe benefits rate. Each shall utilize the federal form now known as a WH-347 (or a successor form or a State of Indiana certified payroll form if and when such a form is adopted) which must be submitted on a weekly basis within five (5) days after the end of each week which the contractor or subcontractor performed its work on the public works project.

Section 8. Public Records

All information submitted by a contractor or sub-contractor pursuant to this Ordinance, including certified payrolls, are public records subject to review pursuant to the Indiana Access to Public Records law (Indiana Code 5-14-3-1 et seq.).

Section 9. Materiality

The requirements of this Ordinance are a material part of the bid documents and the contract and the successful bidder shall insert this Ordinance in all subcontracts.

Section 10. Severability_

If any portion of this Ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other portions or applications of this Ordinance which can be given effect without the invalid portions or applications and, to this end, the portions of this Ordinance are severable.

Section 11. Other Ordinances

Any prior ordinance or portion thereof in conflict with this Ordinance is hereby revoked.

Section 12. Effective Date

This Ordinance shall take effect upon passage by the Common Council of the City of _____.

This Ordinance is passed by the Common Council of the City of _____, Indiana on the ____ day of _____, 200__.

Presiding Officer

Attest:

Clerk

This Ordinance, having been passed by the Common Council is presented by me to the Mayor on the ____ day of _____, 200__.

Clerk

This Ordinance, having been passed by the Common Council and presented to me is approved by me and duly adopted on the ____ day of _____, 200__.

Mayor